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EuroManagers
Un programme de formation à la gestion de l' intégration européenne

Robert Polet
Professeur associé, IEAP

L' Union européenne joue un rôle croissant dans le développement des politiques conduites dans des domaines de plus en plus nombreux.

La capacité de comprendre ce développement et, surtout, de pouvoir intervenir tant dans le processus d' élaboration des normes que dans la mise en oeuvre des politiques européennes, devient une compétence-clé pour une gestion réussie des administrations des Etats membres.

Demain, les **administrateurs** performants seront des ***EuroManagers*.**

Dans ce contexte, l' ***Institut Européen d' Administration*** **Publique (IEAP),** en collaboration avec un certain nombre d' instituts nationaux de formation, offre aux *hauts fonctionnaires* une opportunité exceptionnelle de perfectionnement dans la gestion des matières affectées par les politiques de l' Union européenne.

Ce nouveau programme est conçu de manière à répondre à leurs besoins spécifiques:

- rencontrer leurs partenaires des autres Etats membres travaillant dans le même domaine;

- échanger leurs points de vue et comparer les pratiques professionnelles développées dans les environnements politiques et culturels diversifiés de leurs administrations d' origine;

- rencontrer des experts européens, qu' ils soient issus de la Commission européenne et d' autres institutions, de la pratique de terrain, ou des Universités, dans leur propre domaine d' action;

- comprendre les stratégies, politiques et instruments mis en oeuvre au niveau européen dans le domaine concerné;

- bénéficier de méthodes efficaces de formation allant droit au but, sans gaspiller leur temps, une ressource trop précieuse;

- fournir un feed-back aux instittions de l' UE concernant leur domaine d' action spécifique à travers un rapport de synthèse élaboré à la fin de chaque programme par les ***EuroManagers*** eux-mêmes.

Une méthodologie appropriée de formation

Le programme ***EuroManagers*** est proposé exclusivement aux **hauts fonctionnaires**:

- qui gèrent des domaines concernés par les Traités, des Directives, des Règlements ou des Programmes de l' Union européenne;

- qui sont impliqués dans le processus d' élaboration des politiques tant sur le plan intérieur que sur le plan européen;

- qui travaillent au sein du gouvernement central ou dans des institutions de l' Etat

- ou encore dans des gouvernements régionaux ou organismes publics qui en dépendent;

- à un niveau hiérarchique compris entre le Directeur général et le Chef de service;

- qui souhaitent rencontrer leurs homologues d' autres Etats membres de l' UE et partager leurs points de vue en rapport direct avec leurs activités et responsabilités quotidiennes;

- qui souhaitent devenir les ***EuroManagers*** de demain.

Le processus de formation est centré davantage sur des ***problèmes*** à résoudre ou des ***projets*** concrets que sur des approches théoriques. Ceci n' exclut cependant pas des apports de haut niveau par les experts les plus qualifiés.

Les participants sont ***acteurs*** du processus, ils utilisent des instruments *ad hoc* dans le cadre de problèmes concrets propres à leur environnement de travail.

Un ***processus dynamique d' échange*** est développé au sein de chaque module en alternant exposés, discussions entre participants, experts et hommes de terrain, études de cas et visites de sites, et en préparant collectivement les prochaines étapes du programme à l' aide de ***travaux intermédiaires*** à réaliser entre les modules.

Un programme modulaire

Le programme ***EuroManagers***onsiste en quatre modules répartis sur 8 à 10 mois, qui sont organisés comme quatre séminaires individuels dans quatre villes différentes de l' Union européenne.

Chaque module se déroule en trois jours et est consacré à un thème spécifique.

Au cours du dernier module, les participants - gestionnaires spécialisés dans le domaine concerné - rédigent des ***recommandations en termes à la fois politiques et de gestion*** sur la politique examinée, à l' intention des institutions de l' UE.

Leur rapport est finalisé par l' équipe de l' IEAP responsable du programme et sous le contrôle des participants. Il doit constituer ***un outil déterminant*** dont les administrations et les ministères concernés mesurent l' importance.

EuroManagers *dans un domaine de politique spécifique*

Le programme est conçu en tenant compte de toute l' information rassemblée grâce à nos contacts avec la Commission, à nos discussions avec des gestionnaires publics des administrations communautaire, nationale et régionale, ainsi qu' avec des experts universitaires.

L' organigramme ci-après décrit le schéma général du programme, les domaines qui sont abordés, et le type de travaux qui sont préparés par les participants et l' équipe de l' IEAP responsable du programme.

Une logique est inscrite dans ce programme, en ***4 phases successives***:

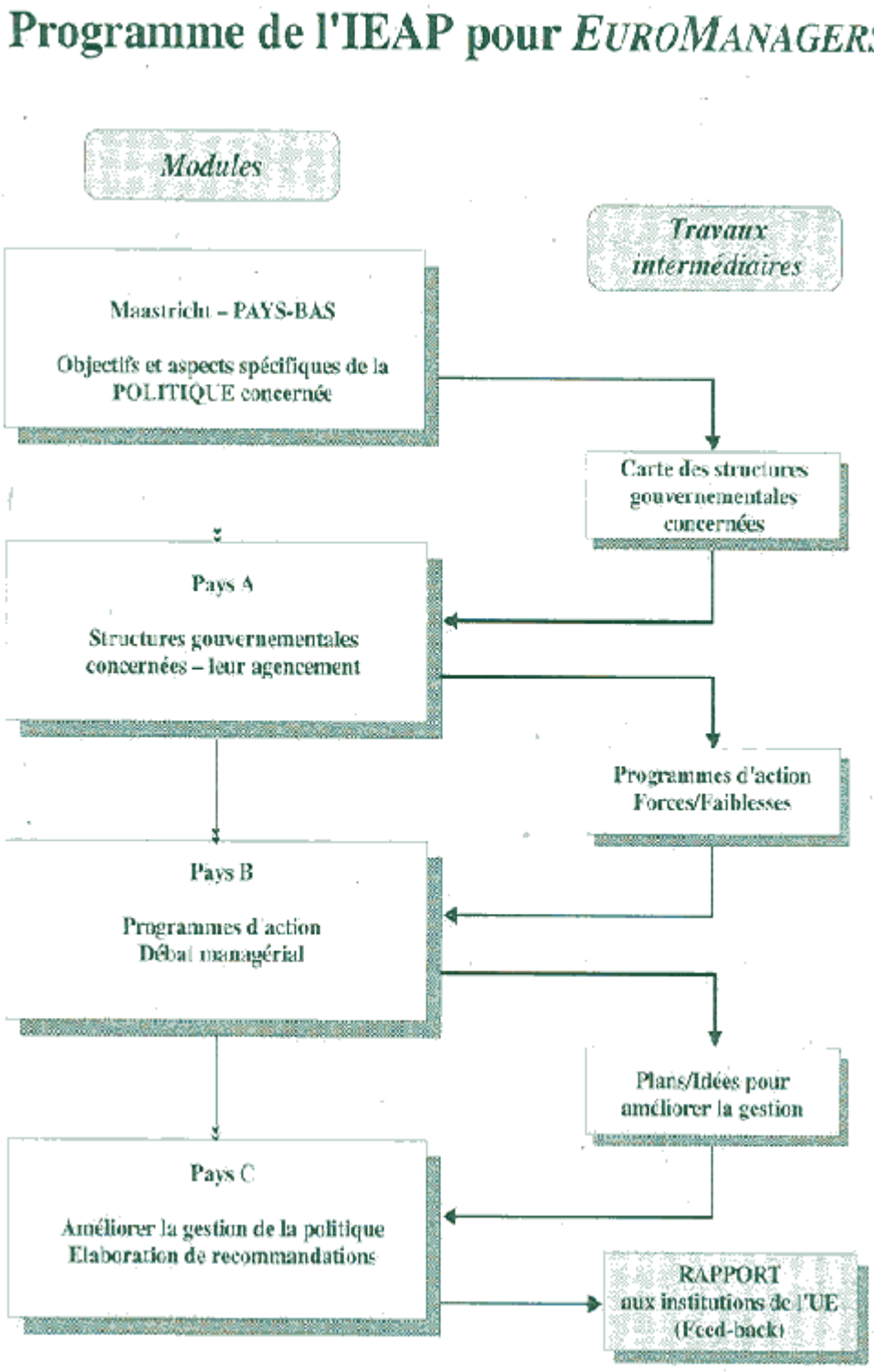
1. Approche des politiques;

2. Structures gouvernementales et méthodes de gestion utilisées;

3. Forces et faiblesses de programmes d' action spécifiques;

4. Plans visant à améliorer la gestion et l' efficacité de la politique.

En outre, les travaux entre les modules sont conçus de manière telle à tirer profit du module précédent et à apporter des éléments nouveaux dans le suivant.



Un outil permanent de formation et de coopération au profit des hauts fonctionnaires des Etats membres et de l' UE

L' expérience acquise lors de l' organisationde notre premier programme-pilote en 1996 (sur la politique de développement régional, en coopération avec des institutions de formation en Grèce, au Danemark et en Belgique[1]), et la préparation d' un deuxième programme pour 1997 (sur la politique de l' environnement, en coopération avec des institutions de formation en France, en Finlande et en

Italie[2])* font apparaître le besoin et le grand intérêt de ce type d' approche de formation pour les hauts fonctionnaires.

A côté des deux domaines traités jusqu' ici, la politique de développement régional et la politique de l' environnement, d' autres domaines pourront être traités prochainement:

- Politique de concurrence

- Politique étrangère et de sécurité commune

- Politique industrielle

- Politique monétaire

- Politique sociale

- Coopération dans les domaines de la justice et des affaires intérieures

- Politique agricole commune

- Politique des transports

- Politique du commerce extérieur

- Politique de la recherche et du développement

- Aménagement du territoire

- Politique d' éducation et de formation professionnelle

- Cohésion économique et sociale (développement régional)

- etc.

Programme spécial sur la dimension européenne de l' administration publique

L' Institut étudie la possibilité de développer un programme particulier ***EuroManagers*** visant à donner aux cadres dirigeants la possibilité d' orienter et de superviser la dimension européenne du domaine dans lequel ils opèrent en tant que responsables. Ce programme spécifique ne s' attacherait pas à une politique spécifique. Il serait donc plus intéressant dans ce cas de diversifier la participation. L' objectif serait dès lors de rassembler des responsables au plus haut niveau: Secrétaires permanents ou Secrétaires généraux et Directeurs généraux responsables de différents domaines sectoriels.

Le programme pourrait couvrir les objectifs suivants:

- Conseiller les ministres sur la dimension européenne des affaires actuelles;

- Maîtriser l' information stratégique de l' UE;

- Maîtriser la gestion financière des crédits de l' UE et les marchés publics;

- Comprendre et maîtriser le processus de comitologie;

- Négociations européennes de haut niveau;

- Planifier et gérer la présidence européenne;

- Gérer les litiges en matière européenne (jurisprudence de la CJCE);

- Développer un mécanisme de coordination gouvernementale efficace pour les questions européennes.

Conclusion

Le programme ***EuroManagers*** offre au haut fonctionnaire participant l' occasion unique d' expérimenter la dimension européenne de son propre domaine d' expertise et de gestion, de s' enrichir à partir des expériences et des pratiques des autres participants qui travaillent dans un environnement différent, d' échanger des points de vue entre experts des administrations nationales (ou régionales) et experts des différentes institutions de l' Union européenne, de développer un réseau entre participants et d' instaurer un climat de confiance entre les partenaires nationaux dans la construction de l' Europe.

Le processus permet de favoriser la coopération non seulement entre les administrations responsables du même domaine d' activité, mais aussi entre les institutions de formation en administration publique à travers toute l' Europe. C' est là une valeur ajoutée qui a déjà été reconnue par tous les instituts nationaux qui ont pris part à ces programmes. Lors de leur réunion à Rome en mai 1996, les Directeurs des instituts de formation, et les participants au groupe de travail qui a suivi à Bologne en juin 1996, ont exprimé leur souhait de voir développer ce type d' activité de formation européenne en coopération avec l' IEAP et leurs instituts.

L' Institut mettra en oeuvre toute son énergie et sa détermination pour que cette formule innovante de formation destinée aux cadres supérieurs des administrations publiques soit reconnue et soutenue, y compris sur le plan des moyens financiers nécessaires à son développement, par les institutions de l' Union européenne.

NOTES

[1] **KEK Educational** Centre de formation permanente agréé par le Ministère grec du Travail, Athènes; **Ecole Danoise d' Administration Publique**, Copenhague; et **Institut de Formation de l' Administration Fédérale** de Belgique, Bruxelles. Ce premier programme a réuni 26 participants issus de 10 Etats membres de l' UE et appartenant à des administrations de niveau national (ou fédéral) et de niveau régional ou municipal, tous directement impliqués dans la gestion de programmes cofinancés par les fonds structurels de l' Union.

[2] **Ecole Nationale d' Administration** et **Centre des Etudes Européennes** de Strasbourg; **Institut Finlandais de Gestion publique**, Helsinki; et **Ecole Supérieure d' Administration Publique** de Rome.

EuroManagers
A Training programme for Managing European Integration

Robert Polet
Associate Professor, EIPA

The European Union is becoming increasingly important in the field of policy-development in a growing number of political, economic and social areas.

The ability to understand this development and, more importantly, to intervene in both the policy-making process and the implementation of the European policies adopted, is becoming a key requirement for the successful management of Member States' administrations.

Tomorrow' s successful **public administration managers** will be **EuroManagers**

In this context, the **European Institute of Public Administration (EIPA),** in cooperation with a number of national training institutes, is offering **public administration managers** a unique opportunity to upgrade their skills in the management of EU-related matters.

This new programme, tailored to meet their needs, will involve:

- meeting their counterparts from other Member States working in the same policy area;

- exchanging views and practices developed in the various political and cultural environments of their home administrations;

- meeting European experts in their own sphere of activity from the Commission and other institutions, academic experts and those working in the field;

- understanding strategies, policies and instruments used at European level in the relevant field;

- efficient training methods which directly address the issue at hand and avoid wasting valuable time;

- providing feedback with regard to their particular policy area to the EU institutions by means of a concluding report drafted at the end of each programme by the ***EuroManagers*** themselves.

An appropriate training methodology

The ***EuroManagers programme*** is offered exclusively to **senior public administration managers:**

- governing policy areas affected by European Union Treaties, Directives, Regulations and Programmes;

- involved in the policy-making process;

- working both at national level and European level;

- working in central government and government bodies;

- working for regional governments and public bodies;

- at a responsibility level between Director-General and Principal or Head of Unit;

- interested in meeting their counterparts in other EU Member States and exchanging views directly relating to their day-to-day activities and responsibilities;

- keen to be tomorrow' s ***EuroManagers.***

The training programme will focus more on ***problems*** to be solved or ***projects*** to be completed than on theoretical approaches. It includes a high level of input from eminently qualified experts.

The participants will be ***actors*** in the process, working with *ad hoc* tools on concrete problems familiar to their working environment.

A ***dynamic exchange process*** will be developed within each module featuring lectures; discussions between participants, experts and practitioners; case studies; site visits and collectively preparing the next steps of the programme with the aid of ***intermediate assignments.***

A modular programme

The ***EuroManagers*** programme consists of four modules which are run as four individual seminars, in four different cities of the European Union, over a period of eight to ten months.

Each module lasts three days and tackles a specific theme.

During the last module the participants specialized managers in the area concerned draft ***policy and management recommendations*** on the policy under review, addressed to the EU institutions.

This report should be ***an influential tool***, the significance of which will be appreciated by the relevant administrations and ministries.

EuroManagers *in a Specific Policy Area*

The programme will be drafted taking into account all the valuable information gathered through our contacts at the Commission, discussions with Community, national and regional public administration managers, and university experts.

The table below shows the general structure of a programme, the areas which will be covered and the types of assignment which will be given to the participants and the EIPA programme team.

Four ***successive phases*** are incorporated into the programme in a logical order:

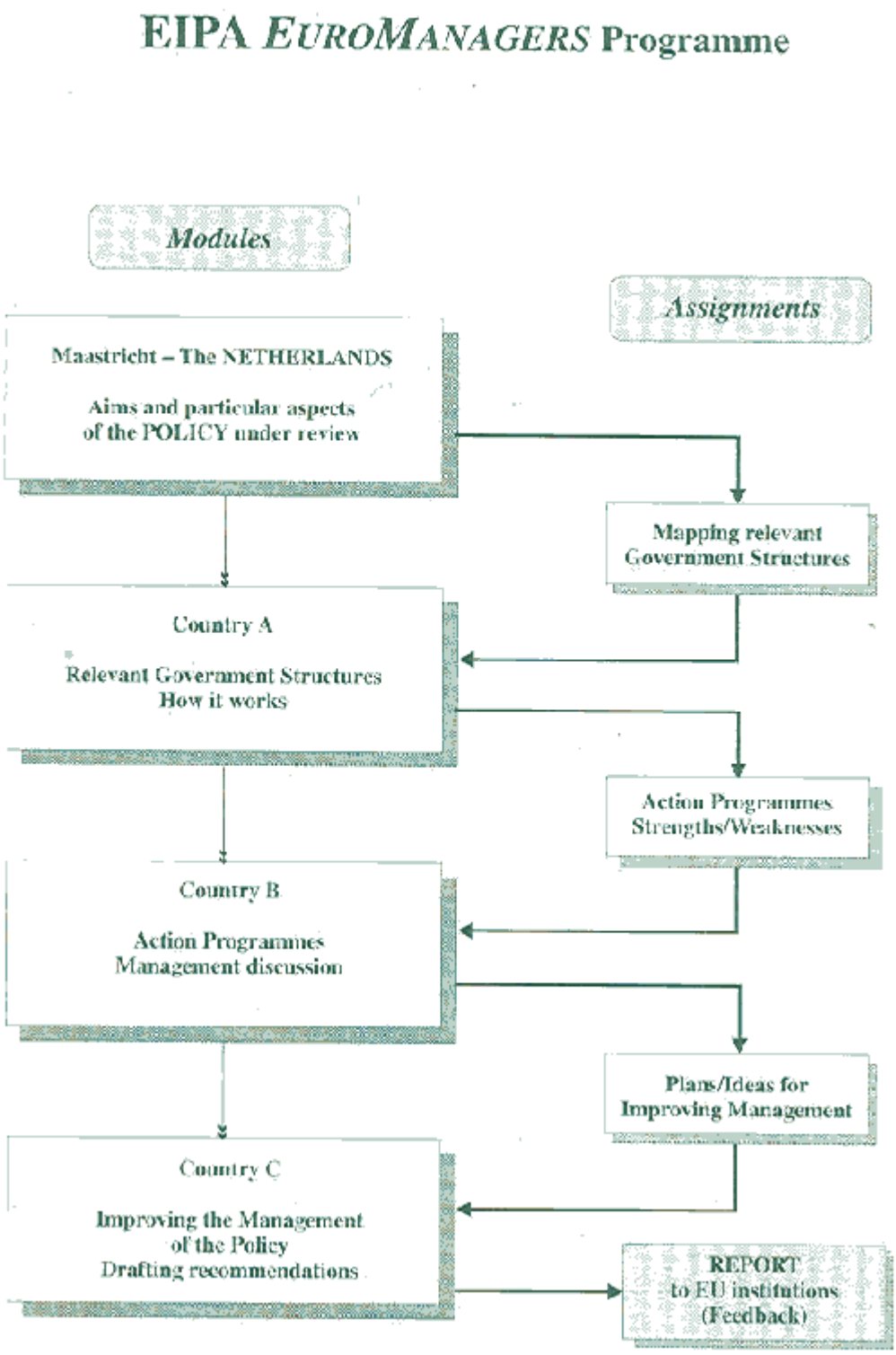
1. Policy approach;

2. Government structures and management methods involved;

3. Strengths and weaknesses of specific action programmes;

4. Plans for improving the management and efficiency of the policy.

In addition, the intermediate assignments will be designed to take advantage of the previous module and contribute to the following one.



A Permanent Training and Cooperation Tool to Benefit both Senior Public Administration Managers and the EU

The experience gained from our first pilot programme run in 1996 (on Regional Development Policy, with the cooperation of training institutions in Greece, Denmark and Belgium[1]) and the preparation of a second programme for 1997 (on Environment Policy, with the cooperation of training institutions in France, Finland and Italy[2])* proves that there is a need for this type of training approach for senior public administration managers and that it is highly rated.

Besides the two policy areas examined to date, Regional Development Policy and Environmental Policy, other domains could be treated in the future:

- Competition Policy

- European Foreign and Security Policy

- Industrial Policy

- Monetary Policy

- Social Policy

- Cooperation in Justice and Home Affairs

- Common Agricultural Policy

- Transport Policy

- Research and Development Policy

- Town and Country Planning

- Education and Vocational Training Policy

- Social & Economic Cohesion (regional development)

- etc.

Special programme on the European dimension of Public Administration

The Institute is currently considering the possibility of developing a special ***EuroManagers*** programme aimed at giving top managers the ability to direct and supervise the European dimension of the domain which they are managing. This particular programme would not go into any specific policy, and it would therefore be more interesting to diversify the participation. The goal would be to gather together managers at the highest level: Permanent Secretaries or Secretaries-General and Directors-General responsible for various policy fields.

The programme could cover the following objectives:

- Advising ministers on the European dimension of current affairs;

- Mastering EU Strategic Information;

- Mastering the financial management of EU funds and public procurements;

- Understanding and mastering the Comitology process;

- High-level European negotiation;

- Planning and managing the European Presidency;

- Managing contentious European issues (ECJ case law);

- Developing an effective governmental coordination device for European issues.

Conclusion

The ***EuroManagers*** programme offers senior officials an exceptional opportunity to experiment with the European dimension of their own area of expertise and management, to learn from others' experience and practice in a different environment, to exchange expert views between national (or regional) administrations and European Union experts from the various institutions, to develop networking between participants and to build confidence between national partners in the construction of Europe.

The process promotes cooperation not only between those administrations in charge of the same policy area, but also between public administration training institutions across Europe. This is an added value that has already been acknowledged by all the national institutes that have participated in these programmes. The directors of training institutes at their meeting in Rome (May 1996), and those at the working group that followed in Bologna (June 1996) have announced their wish to develop this kind of European training event to be run in cooperation ith EIPA and their institutes.

The Institute will devote all its energy and determination to securing recognition and support from the EU institutions, including the financial means necessary for developing this innovative training scheme designed for senior public administration managers.

NOTES

[1] **KEK Educational**, Vocational Training Centre recognized by the Greek Ministry of Labour, Athens; **Danish School of Public Administration**, Copenhagen; and Belgian ***Institut de Formation de l' Administration fédérale'*** , Brussels. This first programme gathered together 26 participants from ten EU Member States belonging to national (or federal), regional or municipal administrations, all directly involved in managing programmes co-funded by the EU structural funds.

[2] ***Ecole Nationale d' Administration*** and ***Centre d' Etudes Européennes*** *de Strasbourg*; **Finnish Institute of Public Management**, Helsinki; and ***Scuola Superiore della Pubblica Amministrazione***, Rome.

The Process of Enlargement of the European Union

Phedon Nicolaides and Sylvia Raja Boean
Respectively Professor and Research Assistant, EIPA

Introduction

A great deal has already been written about the adjustments the European Union (EU) should make in order to be able to accept new members, and how the applicant Central and East European countries (CEEC) should prepare for the rigours of membership. Even though the CEEC will have to make major efforts to qualify for membership, they have been expressing the expectation that accession to the EU is achievable within the next three to four years. Recently, however, Commission officials have reportedly estimated that the accession of these countries will probably happen later than first envisaged. They now seem to believe that the entry of even the more advanced applicants will not take place before 2002-3.

Naturally the timing of the next enlargement of the Union will be determined to a significant extent by the progress made by the CEEC in the transition to democratic political systems with fully functioning market-based economies. However, the mechanism of enlargement itself is a time-consuming process, and this introduces a natural' delay factor.

Just as the debate on Economic and Monetary Union (EMU) has shifted from whether or not such a union is desirable to the means and practical difficulties of introducing a single currency, so the debate on the next enlargement has started to consider the problems and challenges associated with the practicalities of preparing the CEEC for and admitting them to the EU.

Criteria and Requirements of Memership

Article O of the Treaty on European Union (TEU) defines the basic membership criterion which is European identity. The same Article also outlines in broad terms the procedure for applying for membership of the Union. The general political principles which should be respected by current and future members of the EU are defined in Article F of the TEU, which stipulates that the Union shall (1) respect the national identities of its Member States, whose systems of government are founded on the principles of democracy, and (2) respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

A distinction should be drawn between the formal membership criteria, which are spelled out in the Treaty and which are rather general, and the more detailed preconditions which applicant countries have to satisfy. These have been agreed upon during successive European Council meetings and are the following:

- stability of institutions guaranteeing democracy, the rule of law and human rights;
- respect for and protection of minorities;
- the existence of a functioning market economy;
- the capacity to cope with competitive pressure and market forces within the Union;
- the ability to adhere to the aims of political, economic and monetary union.[1]

In addition to these conditions, the Union' s capacity to absorb new members is also taken into consideration. The European Council has therefore decided that the functioning and the decision-making procedures of the Union institutions have to be improved in order to preserve the Union' s capacity for action, while maintaining and developing the acquis.

- A number of conclusions may be drawn from the above list of the requirements for membership as expressed in various European Council declarations during the last couple of years:

- both the Union and the applicant countries need to prepare in their own ways;
- the preparedness of the applicants is to be assessed by means of a number of political and economic criteria;
- the applicants will have to prepare more extensively than has been the case with previous enlargements because their political/legal systems will also be scrutinized by the EU;
- the preparation of the Union requires institutional, financial and policy reform;
- the process of negotiation and accession is seen as a collective effort, although somehow each applicant will be treated equally, but still on its own merits;
- it is envisaged that, between now and the time of eventual accession, a multitude of channels of communication and cooperation between the Union and the applicants will be developed.

As is now well understood and widely acknowledged, the EU must first reform its common agricultural policy, its structural policies and its budgetary arrangements before it can accommodate the CEEC. However even if, in the course of the next four years, these policies and arrangements are appropriately reformed and the Intergovernmental Conference (IGC) adjusts EU institutions accordingly, it may be premature to assume that the CEEC will join the Union by the year 2000. Not only will they themselves have to be ready to assume the obligations of membership, but the mechanisms for assessing their readiness and of determining the terms of their accession will also have to be in place, and this could take considerable time.

As past experience has shown, the accession process, from the launch to the conclusion of the negotiations and further to the actual date of accession, is an extremely lengthy one. As demonstrated in the table, the length of time between the different stages of becoming a member varies considerably (for example, from four to 34 months between the application and the issuing of the Commission Opinion and from three to 33 months between the issuing of the Opinion and the start of the negotiations). Furthermore, the length of the negotiations varies considerably (from 14 to 80 months). All this means that an applicant country may wait a long time from the date of application, an average of six years, before actually acceding to the EU. As shown in the table, most members of the EU first had associate status before joining the Community or the Union.

The following section explains in what ways accession negotiations are more like entry examinations and less like negotiations between equal partners.

The Process of Accession Negotiations[2]

Here, a general framework of the negotiations for accession to the Union is outlined, based on the experience gained from the recent accession negotiations with Austria, Finland, Norway and Sweden. The purpose of this section is to highlight the different stages of the negotiations and the procedure that is followed.

The negotiations with those countries were carried out in a relatively short space of time (from February 1993 to March 1994), which can be explained by the fact that the EU and those countries had earlier concluded the European Economic Area Agreement (EEA Agreement). During the EEA negotiations a thorough analysis of the relevant national legislation of each country was carried out and after the negotiations were concluded, those countries were kept informed of any developments concerning the internal market and of any new measures that had to be adopted by them as well.

From Application to Accession

Country	Associate Membership	Application	Opinion	Start of negotiations	Treaty of Accession	Accession
Denmark		May 1967	Sept. 1967	June 1970	Jan. 1972	Jan. 1973
Ireland		May 1967	Sept. 1967	June 1970	Jan. 1972	Jan. 1973
UK		May 1967	Sept. 1967	Dec. 1969	Jan. 1972	Jan. 1973
Greece	1962	June 1975	Jan. 1976	July 1976	May 1979	Jan. 1981
Portugal	**	March 1977	April 1978	Oct. 1978	June 1985	Jan. 1986
Spain	**	July 1977	April 1978	Feb. 1979	June 1985	Jan. 1986
Turkey	1964	April 1987	Dec. 1989			
Austria	1994 *	July 1989	Aug. 1991	Feb. 1993	June 1994	Jan. 1995
Cyprus	1973	July 1990	June 1993			
Malta	1972	July 1990	June 1993			
Sweden	1994 *	July 1991	Aug. 1992	Feb. 1993	June 1994	Jan. 1995
Finland	1994 *	March 1992	Nov. 1992	Feb. 1993	June 1994	Jan. 1995
Norway	1994 *	Nov. 1992	March 1993	April 1993	June 1994	
Hungary	1992	April 1994				
Poland	1992	April 1994				
Latvia	***	Oct. 1994				
Romania	1993	June 1995				
Slovakia	1992	June 1995				
Estonia	***	Nov. 1995				
Lithuania	***	Dec. 1995				
Bulgaria	1993	Dec. 1995				
Czech Republic	1992	Jan. 1996				
Slovenia		June 1996				

* EFTA (1994), free trade agreement since 1970s (Norway, Finland, Austria since 1973, Sweden since 1972).
** preferential trade agreement since 1970 for Spain, and since 1972 for Portugal.
*** free trade agreements since 1994.

The accession negotiations were set up in parallel, but with separate tracks for each of the four countries. These negotiations which took the form of an IGC between the Twelve and the applicants were led by the Presidency with the help of the Commission, with a specially created Enlargement Task Force whose members were drawn from various Directorates-General of the Commission. The Council had also set up an ad hoc Enlargement Working Group which was assisted by the Council Secretariat.[3]

Accession negotiations serve several purposes:

- to reach an greement on the terms of accession;
- to adjust the Treaties to account for the participation of new members;
- to define, if necessary, exceptions from general Treaty principles;
- to determine the number, length and nature of transitional periods;
- to determine the contribution of the applicant to the Community budget and define any other special form of budgetary adjustment;
- to determine the size of the allocation of structural funds and cohesion funds and any other special form of assistance;
- to define the timing and nature of participation of the new member in the common policies;
- to determine any necessary adjustment of the common policies and;
- to consider any other special measures to ease the adjustment process. The reasons for transitional periods are manifold and intend to provide time for the following:
    - the adjustment of the economy of the new members,
    - the adjustment of the EU itself,
    - the implementation of the acquis by the new member,
    - the establishment of agencies and enforcement mechanisms for Community legislation,

- the balancing of financial contributions and receipts.

The issues covered by the negotiations were arranged in 29 chapters. It is possible that during the next enlargement negotiations more chapters will be added to the list as a result of the extension in the acquis that may be brought about by the 1996 IGC. Certainly, the chapters on EMU, JHA and CFSP will be larger. Given the special circumstances of the CEEC, there could also be chapters on the functioning of their democratic institutions, the rights of their minorities, etc.

Before any negotiations took place, the Commission first explained the content of the acquis to the four applicants (this is known as screening'). The applicants could either (1) accept the acquis in full, in which case no further negotiations were necessary, (2) request exploratory talks or (3) consider the acquis not to be directly applicable. If the applicants considered that they could not adopt the acquis they presented their views in special meetings with the Member States or Conferences' , in a so-called Position Paper, outlining why they would not be able to accept the acquis on their accession without transitional periods or derogations. These Position Papers could be withdrawn following explanation from the services of the Commission (exploratory talks), but if this was not the case a Draft Common Position (DCP) was prepared by the Commission (Task Force and competent services) in order to reply to the requests of the applicants on each negotiating point, and then forwarded to the Council.[4]

The DCP was then discussed with the Member States in the ad-hoc Enlargement Working Group of the Council, the purpose of which was to achieve common negotiating positions for the Twelve, which were then drafted unanimously as Common Positions (CP) of the Member States. The Presidency presented the CP to the Ambassadors or to the Ministers in the Conferences. When a subject could not be agreed upon by th conference at Ambassador level, it was passed on to the Ministers for decisions.

After the final political agreement had been achieved, legal drafts of the Accession Treaties, their Acts, Annexes and Protocols were prepared by the Commission. It was during these negotiations that the assent procedure of the Maastricht Treaty was used for the first time in an enlargement context. After the signing ceremony, the Accession Treaties had to be ratified by the Sixteen in accordance with their respective constitutional requirements.

During the negotiations with Austria, Finland, Sweden and Norway, several issues proved to be more complex than others.[5] For the very difficult chapters, there were protracted negotiations and differences were resolved only at Ambassadorial or, mostly, Ministerial level. In general the difficult subjects had been those which were perceived by the applicant countries to be (a) inextricably linked with their national character (e.g. high environmental standards, high support for farmers), (b) vital to their national interest (e.g. fishing rights, oil exploration rights), or (c) detrimental to their standard of living if national measures were to be abolished or changed (e.g. alcohol and tobacco monopolies, restrictions on transit of heavy vehicles).

One of the purposes of the negotiations was to define the transitional periods for the incorporation of the acquis into the legislation of the new members and the granting of any derogations. Although in principle no permanent derogations are granted by the EU, a few were indeed conceded. By and large, these few permanent derogations are unimportant to the EU and no fundamental Treaty principle has been compromised.

Conclusion: What Kind of Timescale for the Next Enlargement?

Negotiations for the next enlargement of the Union will start six months after the 1996 IGC, first with Cyprus and Malta and perhaps with CEEC. Given that the EU has defined a pre-accession strategy, the negotiations may focus first on assessing the progress achieved in implementing the

various components of that strategy. The length of the negotiations will depend on how well-prepared for accession the applicants will be, the number and nature of the derogations they will need, the length of the transitional periods they will request and the extent to which the Union will have adapted itself to receive new, relatively poorer members.

With the exception of the entry of the three former EFTA countries, experience suggests that accession negotiations are a protracted affair. The more derogations and qualifications of the acquis that are requested by the applicant countries, the more difficult and the more lengthy the negotiations are likely to be. Nonetheless, derogations/qualifications have been granted in the past and, therefore, are likely to be granted in the future. The applicant countries, however, have to exercise judgement and restraint if they aspire to a quick entry into the EU.

If the negotiations with Cyprus and Malta[6] and some CEEC begin, say, in Spring 1998, they may easily last until after the year 2000. If the ratification process takes another year or two the earliest that their accession could be achieved would be around 2002. But by 2000 other CEEC will probably be ready to enter into negotiations with the EU. At that point the EU will face the dilemma of whether to ratify the agreements with only a handful of the applicant countries or delay the admission process until more countries are ready, so that they can all go in as a group.

The EU has already declared that each applicant will be treated on its own merits but this does not ncessarily mean that each applicant will accede as soon as it has satisfied the preconditions, since considerations such as group accessions will also be taken into account. The more members the EU acquires, the more cumbersome and time-consuming the process of negotiation of the terms of accession and of ratification of those terms for each new member.

Three obvious conclusions can be drawn from the preceding discussion. First, the relatively quick accession of the former EFTA countries was the exception rather than the rule. The next enlargement will take much longer to complete. Second, if accession will not be achieved for at least another six years then it makes sense to devote more attention to how the links and cooperation between the EU and the applicants can be developed further. Third, it also makes sense to consider more carefully a gradual approach to accession, which emphasises more the completion of a well-defined sequence of preparatory steps or stages. Since the EU has spelled out the requirements of the internal market in its 1995 White Paper,[7] it should consider extending a form of the European Economic Area to the CEEC. This will indeed ensure that they prepare for eventual membership.

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NOTES

[1] During the deliberations at the European Council meeting in Copenhagen in June 1993, France proposed a more detailed list of criteria which in the end did not appear in the final communiqué. It is worth recalling what they were because it will not be surprising if they re-emerge at a later date. The French list' of admission criteria included the following: (a) a measure of economic development (in terms of GDP/capita), (b) a measure of market economy (in terms of privately held assets), (c) quantifiable level of social protection, (d) control over public debt and inflation, (g) open economy, (h) modern fiscal system and (i) administrative capacity to implement EU law.

[2] This section is based on interviews with Commission and national officials from the EU and the applicant countries. It also draws on various articles analysing the procedures and results of the negotiations (see the titles cited in the list of references).

[3] For the forthcoming accession negotiations a new task force has been set up in the Commission under the acronym of GISELA (*Groupe Interservice Elargissement*). It is a network of experts from all the Commission Directorates-General plus the Secretariat General, the Legal Service, the Statistical Office, the Cellule Prospective, the Task Force JHA, the Task Force IGC and Euratom.

[4] Matters going beyond simple technical adaptations and requiring substantial temporary derogations were decided in the Council Drafting Committee or if necessary by the Deputies or even Ministers, resulting in an amended DCP.

[5] These were environmental, health and safety standards, agricultural policy, regional policy, state monopolies (alcohol, tobacco), taxation (VAT), fisheries (fishing rights), budgetary provisions (contributions, receipts), transport policy (transit), energy (oil exploration).

[6] At the time of writing of this article, a new government had been elected in Malta. The election manifesto of the new prime minister included among other things a pledge to withdraw Malta' s application for membership of the EU. It is, therefore, unclear whether Malta will indeed begin accession negotiations at the same time as Cyprus.

[7] European Commission (1995), White Paper: *Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union*.

Le Mercosur: situation actuelle et perspectives d' avenir

Daniel Schutt (*)

** Coordinateur pour le Mercosur et le Chili, Centre de formation pour l' intégration régionale (CEFIR), Montevideo, Uruguay. Les opinions exprimées dans cet article sont strictement personnelles et n' engagent pas le Centre où l' auteur travaille.*

Introduction

Le Marché commun du Sud (Mercosur: Argentine, Brésil, Uruguay et Paraguay),[1] constitué en mars 1991 et considéré au début comme une nouvelle (et énième) tentative d' intégration latino-américaine dont les aspirations étaient nobles mais les résultats incertains, est devenu en un peu plus de cinq années le fer de lance des efforts déterminés visant à la construction d' un marché régional à l' extrême sud du continent.

La nouvelle vague mondiale d' initiatives régionales, certaines d' un nouveau cru, d' autres plus anciennes mais substantiellement revigorées, qui commencent à se concrétiser au niveau mondial à partir de la moitié des années quatre-vingt et dont l' exemple le plus probant est le lancement du projet de marché unique européen en 1985, se fait directement ressentir en Amérique latine.[2] Par la suite, en 1986, les plus hauts dirigeants des jeunes démocraties récemment réinstaurées en Argentine et au Brésil, scellent la fin de la rivalité historique entre les deux pays les plus puissants d' Amérique latine. Ces deux pays commencent à concevoir un projet d' association économique bilatéral, initialement aux contours assez flous, mais emblématique du point de vue politique: il s' agit essentiellement de promouvoir l' idée de l' intégration dans le Cono Sur, dans lequel on trouvait paradoxalement peu d' antécédents historiques.

Si l' on examine rétrospectivement la décennie écoulée, force est de constater que les progrès réalisés par l' Amérique latine dans la période 1985-1995 représentent un véritable travail de cyclope. Ces progrès reposent sur le tripode: démocratisation politique, dérégulation économique et ouverture commerciale unilatérale. L' intégration économico-commerciale et la coopération régionale cette dernière ayant une importance particulière au plan militaire et nucléaire, car elle a supposé dans le cas argentino-brésilien l' élimination de sources de conflits peuvent être considérées comme deux facteurs qui ont contribué à la stabilité politique et économique en place, même si elle s' est accompagnée de soubresauts. L' intégration dans le Cono Sur constitue, en somme, un facteur essentiel pour comprendre les changements politiques et économiques intervenus au cours de la dernière décennie dans cette région.

En 1985, la région s' efforce de trouver un remède à la sévère crise économique dont l' épicentre réside dans l' éclatement de la crise de la dette après l' annonce par le Mexique en août 1982 de la suspension de ses paiements à ses créanciers. Les effets de cette crise se répercuteront en s' amplifiant dans presque toute la région dans les années qui suivront. D' autre part, de nombreux pays de cette région (ceux d Mercosur) amorcent dans les années qui suivront des processus de transition vers la démocratie: l' Argentine en 1983, l' Uruguay et le Brésil en 1985, le Paraguay en 1989.

Ce que la littérature internationale désigne comme *nouveau régionalisme*,[3] a vu le jour en Amérique latine sous le nom de *régionalisme ouvert*,[4] concept qui entend montrer clairement la vocation des processus d' intégration à être le moteur d' une nouvelle insertion de ces pays au niveau international. Il ne s' agit pas, loin s' en faut, de la construction d' une forteresse latino-américaine caractérisée par des politiques privilégiant le marché interne.

Il semble évident que la perception des nouvelles données du scénario économique

international, que l' on a appelée globalisation, influence sensiblement les nouveaux développements. La croissance substantielle de l' interaction et de l' interdépendance des unités qui composent le système mondial se manifeste, en particulier, dans la tendance expansionniste des marchés, la transnationalisation des échanges, et l' extraordinaire internationalisation ainsi que la grande mobilité des transactions monétaires. L' effet immédiat de la globalisation est une réduction forcée des marges d' autonomie des Etats et de leur capacité régulatrice, ainsi qu' une modification des mécanismes de transmission des tendances internationales à la dynamique des économies nationales, utilisant les investissements comme forces motrices de l' actuel cycle d' internationalisation. Partant de ces tendances, on a soutenu[5] que certaines différences dans les pratiques internationales et certaines mutations dans la compétitivité relative des entreprises (et par extension des Etats) peuvent avoir de grands effets sur le commerce international et sur la capitalisation des flux d' investissement. L' intégration serait précisément l' un des mécanismes primordiaux d' harmonisation subglobale qui vise à favoriser ce processus.

Cet article entend contribuer à meilleure connaissance des principaux traits d' un des processus d' intégration les plus dynamiques du monde en développement, le Mercosur, qui, malgré ses réalisations indiscutables, est cependant mal connu par le public européen en général, hormis les spécialistes de la question.

La première section présente quelques chiffres qui permettent de mesurer le poids économique de la région, tant dans sa dimension et son évolution internes que dans le contexte international. La deuxième évoque quelques jalons fondamentaux de ses cinq années et demie d' existence en tant qu' association économique. La troisième partie aborde quelques-uns des enjeux à court terme et les perspectives de consolidation ou dilution du processus d' intégration du Mercosur.

1. Sonder le poids économique du Mercosur: quelques références statistiques

Grâce à son potentiel économique, le Mercosur constitue la quatrième zone économique du monde. Son PIB total était estimé fin 1995 à quelque 800 milliards de dollars, ce qui le place après l' Union européenne (UE: 8.900 milliards de dollars), l' Accord de Libre Echange Nord-Américain (ALENA: 8.600 milliards de dollars) et le Japon (5.100 milliards de dollars) dans le classement des marchés et régions intégrés de la planète, mais devant l' Association des Nations de l' Asie du Sud-Est (ASEAN:[6] 700 milliards de dollars) et la Fédération russe (440 milliards de dollars).[7] Sur la base de quelques statistiques fournies par des organismes internationaux, on peut affirmer que le Mercosur représente environ 20% de la production de ce que l' on considère traditionnellement comme les pays en voie de développement.[8] Sa population qui compte 205 millions d' habitants, représene 45% de la population totale d' Amérique latine et a un revenu par habitant de près de 4.000 dollars.[9] La superficie totale de ces quatre pays couvre plus de 12.800.000 km^2 (soit 59% de la superficie totale de l' Amérique latine).

Certes, les exportations totales de la sous-région qui en 1995 s' élevaient à 71 milliards de dollars représentent seulement 1,5% du volume des exportations mondiales et se situent au-dessous des cotes historiques que cette région avait atteintes dans les années 50 et 60. Si l' on ajoute les importations, soit quelque 80 milliards de dollars, le poids du Mercosur à l' échelle mondiale s' élève à environ 3%.[10] En ce qui concerne les transactions intra-régionales, le commerce intra-Mercosur (qui se situe aux alentours de 15 milliards de dollars) représente 41% du total des exportations intra-latino-américaines, dont le volume a atteint 37 milliards de dollars en 1995. L' Uruguay et le Paraguay réalisent près de 50% de leurs échanges avec leurs partenaires du Mercosur, l' Argentine un peu plus de 30% et le Brésil environ 20%.

A la lumière de ces chiffres, qui montrent clairement le poids économique de ce bloc et la forte impulsion que lui a conférée sa configuration en tant qu' union douanière en formation à partir de 1995, le Mercosur apparaît comme un bloc émergeant dans tout scénario de cette fin de siècle. Le Mercosur possède en effet un fort potentiel de croissance, un marché en expansion et un degré élevé d' ouverture et d' attrait pour les investissements étrangers.[11] Le Mercosur apparaît toujours plus comme un marché doté de capacités pour accroître rapidement ses niveaux actuels de production et de consommation de biens et de services, étant par là en contraste marqué avec la stagnation des années ' 80.

2. Tentatives antérieures d' intégration régionale

Les tentatives d' intégration ne datent pas d' hier en Amérique latine. Si l' on s' en tient aux tentatives théoriques et aux premières études de la Commission économique des Nations unies pour l' Amérique latine et les Caraïbes organisme précurseur en matière d' apports techniques en faveur du développement de l' économie régionale , on peut dire que les tentatives d' intégration remontent déjà à 1952. Dans le sillage de la constitution du marché commun européen en 1957, on voit surgir en Amérique latine l' Association latino-américaine de libre échange (ALALE/ALALC) en 1960 (qui fut remplacée en 1980 par l' Association latino-américaine d' intégration-ALADI), le Marché commun centraméricain en 1961, le Pacte andin en 1969 et toute une série d' initiatives qui tôt ou tard allaient essuyer un échec patent ou connaître un franc affaiblissement. Les causes sont multiples et fortement sujettes à controverse à la fois théorique et idéologique, mais la sagesse traditionnelle qui prévaut aujourd' hui semble indiquer un ensemble de trois causes principales qui sont résumées ci-dessous.

En premier lieu, l' inadéquation des politiques mises en place dans le nouveau contexte du capitalisme mondial à partir des années ' 70, à savoir la substitution aux importations comme stratégie d' industrialisation et comme instrument de développement.

En deuxième lieu, le fossé entre le cadre juridique établi en vue de l' intégration régionale et l' absence d' une ferme volonté politique pour sa mise en oeuvre.

Il y eut alors toute une série de projets institutionnels et de dispositifs juridiques plus ou moins calqués sur le modèle de la Communauté européenne et on vit éclore des organismes de coopération régionale ainsi que des entités et corporations nationales chargés d' offrir un soutien politique et tecnique aux gouvernements. Cependant, les engagements déjà si modestes (rarement ils allèrent au-delà de la concession réciproque de préférences commerciales) ne furent pas mis à exécution, mais revus à la baisse ou conditionnés par toute une série d' exceptions et de clauses d' exemption qui dans la pratique finirent par justifier la non réalisation; dès lors, la crédibilité de ces projets fut sérieusement remise en cause. En d' autres termes, les propositions intégratives vacillaient entre un bureaucratisme largement répandu et parfois paralysant, l' instabilité et la précarité des progrès réalisés.

En troisième lieu, l' instabilité politique et les habitudes profondément ancrées de discrétionnalité administrative dans la gestion des politiques publiques qui furent portées à leur paroxysme par la fragilisation ou la banqueroute des finances publiques à la fin des années ' 70 et au début des années ' 80. Dans la pratique, les secteurs économiques et les agents sociaux se montrèrent en général très peu enthousiastes envers toute idée d' intégration qui implique une libéralisation et qui mette en danger non seulement leur situation privilégiée face à un marché protégé, mais aussi leurs avantages en termes de subventions publiques déclarées ou cachées. En d' autres termes, la faiblesse du marché et la survivance du paternalisme de l' Etat générèrent un cadre réfractaire à une véritable libéralisation commerciale.

3. Aspects fondamentaux du processus

La décennie des années quatre-vingts en Amérique latine se caractérise par une crise de la dette et, à ce titre, on la désigne comme "la décennie perdue". Mais les enseignements que l' on a retirés de la déroute économique et des effets de fracture sociale qui en ont résulté sont notables. En définitive, c' est tout un ensemble de prémisses de gestion publique et de politique économique qu' il a fallu fortement reconsidérer. En matière de politique économique, on a adopté les sévères recettes contenues dans la liste des mesures figurant dans le "Consensus de Washington": une liste de mesures de politique économique que les pays de la région ont mises en pratique[12] à des rythmes différents et avec une intensité variable. Il s' agit plus particulièrement de la discipline fiscale; la réduction de la dépense publique; la réduction tarifaire et la libéralisation des échanges; la dérégulation économique et la privatisation d' entreprises publiques. Les critiques portaient en somme sur l' indiscipline fiscale (populisme redistributif) et le dirigisme étatique sur l' économie (discrétionnalisme clientéliste). Dans un environnement de fragilité financière et de dépendance vis-à-vis des ressources externes, ce sont les grandes institutions financières internationales et les organismes multilatéraux de crédit qui vont alors opérer comme des agents privilégiés dans l' homogénéisation des politiques commerciales.[13]

Peut-on établir un parallélisme strict entre l' intégration du Cono Sur latino-américain et l' intégration européenne? Non, car plusieurs raisons s' y opposent, notamment le niveau de développement économique des Etats membres et le degré d' interdépendance entre les membres. Pour mieux comprendre les contrastes qui ont présidé à la naissance de l' intégration européenne dans les années ' 50 et ceux qui ont marqué les nouveaux efforts d' intégration dans le Cono Sur dans les années ' 80, il importe de prendre en considération les aspects suivants.[14] Après la Deuxième Guerre mondiale, l' Europe a dû affronter essentiellement des défis économiques internes et des enjeux politiques extrnes. Les premiers découlaient de la difficile oeuvre de reconstruction menée par les pays européens touchés par les conséquences économiques du conflit. Les seconds impliquaient un repositionnement stratégique dérivé de l' ordre bipolaire de la guerre froide et de la division de l' Allemagne. En revanche, dans le Cono Sur, les défis économiques qui ont émergé du contexte international vers la moitié des années 80 peuvent être considérés comme étant essentiellement de nature externe. Ces défis sont les mêmes que ceux auxquels étaient exposés tous les pays en voie de développement; il s' agissait essentiellement de la réponse à la prolifération de blocs intégrés au niveau mondial et aux exigences accrues de compétitivité, de modernisation productive et de relance technologique. Ces enjeux internationaux ont donné lieu au niveau interne à un processus de redémocratisation, impliquant la réintroduction du consensus social et l' amélioration du fonctionnement des institutions des Etats de droit. Ces mesures sont apparues indispensables après la fracture politique héritée des gouvernements autoritaires qui marquèrent la période comprise entre la moitié des années ' 70 et celle des années ' 80.

En matière de gestion publique, après avoir mis un accent parfois excessif sur la réduction de la taille de l' Etat prônée par la rigueur draconienne des politiques d' ajustement et la sacralisation du marché en vigueur dans les années ' 80 et au début des années ' 90, c' est une véritable réforme de l' Etat qui commence ensuite à prendre forme. Les pays latino-américains ont commencé à renforcer l' Etat et à reconnaître le rôle important des politiques publiques pour la durabilité des réformes économiques. Ils ont ainsi suivi une ligne d' action qui elle-même avait été préconisée par les organismes financiers internationaux. Il n' est dès lors pas surprenant de constater le nouvel accent mis sur le rôle indispensable des gouvernements pour promouvoir la santé, la justice, l' éducation, et le respect des identités régionales émergentes (dans des pays avec de fortes traditions centralistes), certainement dans un nouveau contexte où la prudence financière et le partenariat avec le secteur privé constituent les prémisses de l' action des pouvoirs publics. Comme l' a très justement décrit un expert: on est passé ensuite des thérapies chirurgicales de choc macro-économiques des années 80 aux traitements de rééducation de chimiothérapie institutionnelle.[15]

Les réformes structurelles en profondeur sur le marché du travail, les réformes dans la conception et la gestion efficace de la dépense sociale, et, dernier point mais non des moindres, une stratégie active dans la formation des ressources humaines, sont autant de domaines où la région n' a engrangé que peu de résultats. C' est ainsi que l' on a estimé que l' un des aspects fondamentaux pour la coopération internationale dans la région devait être la formation des administrateurs publics en matière d' intégration régionale. C' est pourquoi, l' Institut européen d' administration publique a accepté en 1992 la mission que lui a confiée la Commission européenne dans le cadre d' un accord conclu par les ministres des Affaires étrangères des pays de la Communauté européenne et du Groupe de Rio,[16] portant sur l' exécution d' un programme de formation pour l' intégration régionale, orienté vers la formation de hauts fonctionnaires des gouvernements latino-américains en matière de formulation, gestion et exécution des politiques publiques relatives à l' intégration régionale. Le Centre de formation pour l' intégration régionale (CEFIR) fut établi en 1993 à Montevideo (Uruguay) afin de gérer et d' exécuter le programme dans toute l' Amérique latine. Les activités réalisées (voir tableau en annexe) montrent la variété es thèmes qui intéressent la région à un moment où toute une série d' initiatives d' intégration se concrétisent dans la pratique.

4. Perspectives: approfondissement et élargissement "modus Mercosur"

Le Mercosur a entamé en janvier 1995 ce que l' on appelle la deuxième transition. On entend par là la poursuite de la première phase (1991-1994) qui a vu la réalisation des lignes directrices contenues dans le Traité d' Asunción de mars 1991 qui a donné le jour au Mercosur. Ce traité est à la base du schéma d' association quadripartite et, plus particulièrement, de l' établissement de la zone de libre échange.[17] La deuxième phase est constituée par les accords contenus dans le Protocole d' Ouro Preto (Brésil), signé en décembre 1994, qui modifient quelques-unes des dispositions du traité et consolident les résultats atteints jusqu' ici.

Au-delà de l' énoncé général très ambitieux d' Asunción, les objectifs visiblement réalistes à moyen terme du Mercosur ont été fixés dans les "sommets" de Colonia (Uruguay) de janvier 1994 et de Buenos Aires d' août 1994, qui ont défini les conditions minimales pour l' entrée en vigueur de l' union douanière et mis au point certains détails opérationnels qui touchent le fonctionnement de la zone de libre échange et le traitement de secteurs considérés comme sensibles.

En termes généraux, les accords conclus prévoient trois actions pour la réalisation des objectifs à moyen terme. Primo, une deuxième phase (1995-2000) pour éliminer les obstacles au libre échange entre les quatre pays, moyennant un régime de rapprochement qui sera finalisé en l' an 2000. Secundo, la définition des produits exemptés du tarif douanier commun, l' une des bases de l' union douanière, en envisageant un traitement spécial pour les biens en capital, les produits informatiques et pétrochimiques et les télécommunications qui ne seront pleinement libéralisés que vers l' an 2006. Tertio, des régimes spéciaux seront établis pour des secteurs tels que l' industrie sucrière et l' automobile,[18] qui comporteront des quotas et des dispositions nationales très restrictives jusqu' à l' an 2000.

Quoi qu' il en soit, le Mercosur doit encore confirmer dans les faits le passage d' une intégration négative (élimination de droits de douane dont le succès est indiscutable à partir de la pleine réalisation du programme de libéralisation commerciale et des entraves non tarifaires qui, comme on le sait, sont plus difficiles à éliminer) à une intégration positive (qui implique non seulement la fixation d' un tarif douanier commun (TDC), mais aussi l' adoption d' un ensemble de politiques communes, ce qui suppose, en particulier, l' harmonisation des législations et la coordination des politiques entre les quatre membres).

Au plan institutionnel, le dispositif qui a été retenu est de type intergouvernemental et s' appuie fortement sur des instances composées de diplomates des ministères des Relations

extérieures et de fonctionnaires des ministères de l' Economie et des Finances (Groupe Marché commun), sur lesquels repose le grand poids des décisions et des actions de suivi et de négociation extérieure,[19] et sur un organe décisionnel composé des présidents (Conseil Marché commun) qui se réunit deux fois par an.

On peut observer des carences évidentes dans ce dispositif en matière de contrôle de légalité et de résolution des controverses. Pour l' heure, la gestion des conflits repose sur une approche personnelle, c' est-à-dire sur l' habileté des négociateurs et sur le dialogue politique de haut niveau. Cependant, si l' efficacité de cette approche est apparue jsqu' ici très élevée pour désamorcer les crises, son impact sur la sécurité juridique du processus est manifestement peu tangible. Ces pays sont ensuite convenus dans la pratique de ne pas recourir aux procédures de résolution de controverse contenues dans le Protocole de Brasilia, qui prévoit le règlement des litiges par un panel d' arbitrage après avoir épuisé les différents canaux de négociations directes. Cette "politisation" des conflits, résultant de l' exiguïté des instruments d' arbitrage, donne un souffle nouveau à la réflexion entre experts et un nombre considérable des "décideurs" du Mercosur sur l' opportunité d' installer des instances communes permanentes de gestion des conflits, idée qui fait son chemin parmi les magistrats des tribunaux supérieurs du Mercosur.

Les liens étroits du Mercosur avec les autres pays et accords commerciaux sud-américains gagnent du terrain, et on voit se profiler à l' horizon la perspective d' une convergence progressive de tous les processus d' intégration. Le Mercosur a conclu en juin 1996 la négociation d' un accord pour la constitution d' une zone de libre échange avec le Chili qui est entré en vigueur en octobre de cette année. Un autre accord analogue avec la Bolivie entrera lui en vigueur en janvier 1997. Dans l' immédiat, une part substantielle du commerce du bloc avec les deux pays (autour de 80%) jouira de préférences tarifaires qui augmenteront progressivement jusqu' à l' exemption totale des droits de douane au cours d' une période oscillant entre 8 et 18 ans, selon les marchandises.

De même, il est prévu qu' en décembre 1996 le Mercosur conclura un accord de même type avec le Venezuela, qui s' étendra probablement aux autres pays du Groupe Andin (Colombie, Equateur et Pérou), partant de l' hypothèse qu' il sera possible de fixer l' objectif de la formation d' une zone de libre échange dans un délai de dix ans.

Cependant, c' est sans aucun doute l' *Accord de coopération interrégionale* que le Mercosur a signé à Madrid le 15 décembre 1995 avec l' Union européenne, qui est le fer de lance du rayonnement extérieur du bloc. Cet accord est le couronnement de l' énorme dynamisme économico-commercial et de l' intensité sans précédent des contacts entre les deux régions au cours des cinq dernières années. Cet accord consacre l' objectif de renforcer la coopération économique et commerciale entre les deux entités et a pour but principal une libéralisation progressive et réciproque des échanges. Cette libéralisation devra permettre d' accéder, au cours d' une deuxième phase, à une zone de libre échange, à condition bien sûr que le Mercosur soit devenu une union douanière vers la moitié de la prochaine décennie (1996-2006).

NOTES

[1] L' emploi non officiel du terme "Cono Sur" était jusqu' au 1er octobre 1996, date d' entrée en vigueur de l' Accord de Libre échange entre le Mercosur et le Chili, relativement imprécis pour rendre compte des contours géographiques réels de ce schéma d' intégration. L'

inexactitude demeure dans une certaine mesure dès lors qu' il n' est pas prévu que le Chili accède à la condition de membre à part entière du Mercosur. Voir "La catarsis de un acto fallido", *Gazeta Mercantil Latinoamericana*, Sao Paulo/Buenos Aires (18-24 août 1996).

[2] On trouve un résumé à jour de ce processus dans l' Organisation Mondiale du Commerce: "Regionalism and the World Trading System", Genève, avril 1995 (pp. 34-36).

[3] Pour une approche analytique des vicissitudes de l' intégration latino-américaine jusqu' au début des années ' 90, voir: Julio Nogués & Rosario Quintanilla: "Latin America' s integration and multilateral trading system", in Jaime de Melo & Arvind Panagariya (eds.): *New dimensions in regional integration*, Cambridge University Press, London, 1993 (pp. 278-318).

[4] Pour une approche latino-américaine, voir: Commission économique des Nations unies pour l' Amérique latine et les Caraïbes (ECLAC/CEPAL): "Open regionalism in Latin America and the Caribbean Economic Integration as a contribution to changing production patterns with social equity", Santiago de Chile, 3 février 1994.

[5] Robert Lawrence: "Perspectivas del sistema de comercio mundial e implicaciones para los países en vía de desarrollo", *Pensamiento Iberoamericano*, n° 20, juillet-décembre 1991, Madrid.

[6] L' Association des nations du Sud-Est asiatique se compose en juillet 1996 des sept pays suivants: Malaysia, Vietnam, Indonésie, Brunei, Thaïlande, Singapour et Philippines. Les estimations sur le PIB ont été réalisées sur la base des données nationales du PIB fournies par *The Economist Intelligence Unit* pour tous les pays cités.

[7] Les estimations du PIB pour 1995 sont tirées des prévisions publiées dans "The World in 1996", The Economist Intelligence Unit, Londres (décembre 1995). Pour le Mercosur, on a pris les chiffres de la Banque interaméricaine de développement.

[8] Voir à ce sujet: Programme des Nations unies pour le développement (PNUD): "Rapport mondial sur le développement humain 1996", Edit. Economica, Paris, juin 1996.

[9] Selon les dernières estimations dont on dispose, le revenu par habitant en Argentine se situe autour de 8.250 dollars, celui du Brésil à 4.350 dollars, celui de l' Uruguay à 5.400 dollars et celui du Paraguay à 1.800 dollars (chiffres pour 1995 publiés dans *The Economist: A survey ofMercosur*, The Economist, 12 octobre 1996).

[10] Le Brésil et l' Argentine sont en raison de leur grandeur respectivement la 9e et la 17e économie au monde. Cependant, les économies des deux pays sont aussi parmi les moins dépendantes du commerce (échange avec l' extérieur en tant que % du PIB) à l' échelle internationale, occupant respectivement la 9e et la 8e place du classement. Données extraites du *The Economist: "Pocket World in Figures-1997 Edition*", Londres, 1996.

[11] Selon un rapport récent de l' Organisation Mondiale du Commerce (OMC), l' Argentine (23.500 millions de dollars) et le Brésil (20.300 millions de dollars) se situent respectivement à la 17e et à la 18e place dans le classement des pays destinataires des principaux flux d' investissements étrangers directs dans la période 1985-1995. World Trade Organization: "*Trade and Foreign Direct Investment*", 16 octobre 1996, Genève.

[12] Williamson, John: "The Progress of Policy Reform in Latin America" in Williamson, John (org.): *Latin America Adjustment*: *How much has happened*?, Institute of International

Economics, Washington D.C., 1990.

[13] Roberto Bouzas et al.: "Regionalism and the Global Economy", FONDAD, La Haye, 1995 (version espagnole: "El regionalismo en el Hemisferio Occidental: NAFTA, Mercosur y después", *Desarrollo Económico*, vol. 36 (été 1996), Buenos Aires.

[14] Ces observations sont tirées de l' article de Ruth Zimmerling: Comparación del modelo de integración Argentina-Brasil con el de la Comunidad Europea' , *Homines*, vol. 13, n° 1, 1989.

[15] Moisés Naim: "Latin America: the Second Stage of Reform", Journal of Democracy, vol. 5, n° 4 (octobre 1994).

[16] Le Groupe de Rio est le nom informel du Mécanisme permanent de consultation et de concertation politique, une instance de coopération politique composée actuellement de douze pays latino-américains (Argentine, Bolivie, Brésil, Colombie, Chili, Equateur, Mexique, Panama, Paraguay, Pérou, Uruguay et Venezuela) dont la réunion constitutive eut lieu à Rio de Janeiro en décembre 1986. La genèse de ce forum symbolise l' émergence vers la moitié des années ' 80 d' une nouvelle personnalité démocratique latino-américaine et illustre, avec ses vertus et ses limites, la vocation à promouvoir des positions communes en matière de politique extérieure.

[17] Le Traité d' Asunción consacre l' objectif de créer un marché commun entre les Etats qui en sont membres. Cependant, l' unique instrument sur lequel les quatre pays se sont mis d' accord dans un premier temps fut le Protocole dit de Libéralisation commerciale, annexé audit Traité, qui prévoit la suppression progressive sur une période de quatre ans des entraves tarifaires et non tarifaires au commerce intérieur.

[18] Les régimes automobiles de l' Argentine et du Brésil ont été fortement critiqués au sein et à l' extérieur de la région à cause de la structure complexe des subventions publiques et des obstacles à l' accès au marché qui les protège, y compris des incitants fiscaux pour l' exportation, des réductions des droits de douane pour l' importation de pièces détachées; entraves à l' importation de véhicules pour les entreprises non établies. L' Argentine et le Brésil ont, en plus, un accord d' échange compensé de véhicules, exemple illustratif de commerce réglementé, et dernièrement ils se sont disputé les investissements étrangers dans ce secteur qui sont estimés à 15 milliards de dollars pour les quatre prochaines années. Il est important de tenir compte des chiffres suivants pour montrer l' importance du secteur: l' acquisition annuelle de véhicules a quintuplé au cours de la pemière moitié des années ' 90 dans la région. Au Brésil, on a produit en 1995 près de 1.600.000 automobiles et en Argentine quelque 300.000. Les deux pays envisagent de passer à une production conjointe vers l' an 2001 de quelque 4.000.000 de véhicules, comptant en cela sur des marchés domestiques en expansion et sur l' exportation vers d' autres pays sud-américains. Une autre critique relative à cette modalité de pratique commerciale considérée contraire et portant atteinte à la libéralisation du commerce mondial, a été émise récemment dans le document de la Banque mondiale: *Does Mercosur' s Trade Performance Justify Concerns about the Effects of Regional Trade Arrangements? Yes*! (voir les articles suivants: "Pour la Banque Mondiale, le Mercosur n' est pas assez libéral", *Courrier International* n° 314 (7-15 novembre 1996) et "World Bank softens criticism of Mercosur", et Martin Wolf: "An unhealthy trade-off", *Financial Times*, 29 octobre 1996.

[19] Le contraste entre la complexité croissante de la gestion interne et externe du processus d' intégration et les faibles ressources administratives et humaines affectées à cette tâche commence à susciter quelques doutes quant à l' efficacité à court terme du bas profil institutionnel du Mercosur. Voir à ce sujet: Jorge Grandi, "Los siete desafíos y los siete

déficits de la integración para América Latina", in *Revista SINTESIS* n° 24: La integración regional en América Latina, Madrid, juillet-décembre 1995, et Roberto Bouzas: "Las negociaciones externas del Mercosur: la construcción de una agenda común", in CEFIR: *Estrategias de articulación y reforzamiento de las capacidades de gestión de una Unión Aduanera: Opciones para el Mercosur* (Montevideo, 8 et 9 juillet 1996).

Important Judgments Delivered by the Court of Justice of the European Communities in the Period 1 May to 1 October 1996

Imelda Higgins and Jesper Svenningsen*
EIPA Antenna Luxembourg

** Respectively lecturer and senior lecturer.*

Since the last issue of EIPASCOPE the Court has delivered a number of interesting decisions despite the summer recess. This article will review recent case law related to damages for breach of Community law, the four freedoms, the environment, equal treatment of men and women, public procurement as well as various institutional questions.

I

The principle of **state liability** for breach of Community law was first set out in the *Francovich* decision ([1991] ECR I-5357). On a number of occasions since that time the Court has been called upon to clarify the conditions under which damages may be obtained. Further light was shed on this matter in Case C-5/94 *Hedley Lomas* of 23 May this year. This case concerned a refusal on the part of the United Kingdom to issue licences for the export of animals for slaughter to Spain. This refusal was based on the belief that Spain, although it had implemented Directive 74/577/EEC of 18 November 1974, had not taken sufficient measures to ensure its enforcement and that some of the Spanish slaughterhouses were not complying with the provisions of the Directive. It was on this basis that Mr Hedley Lomas was refused an export licence for the export of sheep for slaughter to a specific Spanish slaughterhouse. This licence was refused despite the fact that there was no reason to believe that the slaughterhouse in question was not complying with the Directive. Mr Lomas brought proceedings to obtain damages.

Having established that the refusal to issue export licences was an infringement of Community law relating to the free movement of goods, the Court went on to consider the question of state liability. Referring to its judgments in *Francovich* and *Brasserie du Pêcheur* and *Factortame* (Joined Cases C-46/93 and C-48/93, 5 March, 1996, see EIPASCOPE No. 2, 1996). the Court emphasized that the right to reparation must be recognized when three conditions are met: 1) the law infringed must confer rights on individuals; 2) the breach must be sufficiently serious; and 3) there must be a causal link between the breach and the damage sustained. In applying these conditions to the *Lomas* case, the Court considered that as Article 34 EC creates rights for individuals the first condition was fulfilled. As far as the second condition was concerned, the Court pointed out that the breach was serious because the UK government had no discretion with respect to the application of the legislation and, in addition, it had not proved that the slaughterhouse concerned had failed to comply with the terms of the Directive. The Court did not rule on whether or not the third condition had been fulfilled as it felt that this was a matter for the national court to decide. Nevertheless, it would appear that the existence of a causal link between the breach and the damage should not be very difficult to establish.

II

With respect to the **free movement of goods**, the full Court delivered three judgments concerning the question of **trademarks** under Community law. See Joined Cases C-427/93, C-429/93 and C-436/93, *Paranova* and C-71/94, C-72/94 and C-73/94, *Eurim-Pharm* and Case-232/94, *MPA Pharma* delivered on 11 July 196. In these cases the Court further elaborated on the criteria set out in Case 102/77, *Hoffman-La Roche* ([1978] ECR 1139) and Case 1/81, *Pfizer* ([1981] ECR 2913) concerning the circumstances under which a trademark owner may rely on his rights to prevent an importer from marketing a product put on the market in another

Member State by the trademark owner or, with his consent, where that importer has repackaged the product in new packaging to which the trademark has been reaffixed. In the first place it is clear that the trademark owner cannot oppose the repackaging of a product if this is necessary in order to sell the product in the country of importation. However, in cases where the importer may sell the product without repackaging it, the trademark owner is entitled to object if the importer decides to repackage the product. There is no need to repackage a product if it can be rendered suitable for marketing in the Member State of importation simply by affixing new labels or by adding new information or user instructions in the language of the relevant Member State.

The trademark owner will also be entitled to object to the repackaging if it involves a risk that the product inside the package will be exposed, tampered with or subject to influences affecting its original condition. However, as far as pharmaceutical products are concerned, this will not be the case where the repackaging only affects the internal packaging thus leaving the inner packaging intact. Consequently, the mere removal of blister packs from their external packaging and their insertion with other packs into new external packaging cannot be considered to affect the original condition of the product inside the packaging. The Court emphasized that the mere fact that there is an isolated risk of hypothetical error will not be sufficient to confer on the owner of the trademark the right to oppose the repackaging.

As far as the repackaging is concerned, parallel importers are also required to meet a number of other conditions. In the first place, the repackaged product must indicate who has carried out the repackaging. This indication must be printed on the external packaging in such a way that it may be understood by a person with normal eyesight, exercising a normal degree of protection. The importer is under no obligation to state that the repackaging was carried without the authorization of the trademark owner. However, in the event that the parallel importer has added an extra article from a source other than the trademark owner, he must ensure that the origin of the extra article is indicated in such a way as to dispel any impression that the trademark owner is responsible for it. Secondly, the external package must clearly indicate who packaged the product and the packaging must not be such as to give rise to the possibility of damage being caused to the reputation of the trademark. In the case of pharmaceutical products, the Court considered it possible that damage might be caused by defective, poor quality or untidy packaging. However, the Court considered that the requirements concerning the presentation of the product varied according to whether the product was to be sold in hospitals or through pharmacies. In the former case, the Court was of the opinion that presentation was less important than in the latter. Thirdly and finally, the trademark owner must be given advance notice that the repackaged product is being put on sale.

From the 1978 *Hoffman-La Roche* case, it is clear that an owner may not rely on his rights if this contributes to the artificial partitioning of the markets between the Member States. In the cases decided on 11 July 1996, the Court emphasized that when determining whether this condition is met it is not necessary to establish that the owner deliberately sought to partition the market. However, the Court also stressed that the partitioning of the market will not be considered to be artificial when the action of the trademark owner can be justified by the need to safeguard the essential function of the trademarks.

In the case of *Bristol Meyers* a question was also raised concerning the relationship between Article 36 EC and Council Directive 89/104/EEC to approximate the law of the Member States relating to trademarks. In its decision the Court emphasized that national rules on the subject of trademarks must be assessed in the light of the Directive, however the Directive itself should be interpreted in the light of Article 36. The Court then went on to hold that Article 36 remained the basis for determining the scope of application of Article 7(1) of the Directive.

The *Semeraro Casa Uno* case (Joined Cases C-418/93, C-419/93, C-421/93, C-460/93, C-461/93, C-462/93, C-464/93, C-9/94, C-10/94, C-11/94, C-14/94, C-15/94, C-23/94, C-24/94 and C-332/94 *Semeraro Casa Uno* of 20 June 1996) is the latest in a series of cases concerning **Sunday trading rules**. In its decision the Court upheld its previous ruling in the *Punto* case (Joined Cases C-69/93 and C-258/93 [1994] ECR I-2355) and ruled that Article 30 EC is not to be interpreted as applying to national legislation on the closing times of shops, which applies to all traders operating within the national territory and which affects in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States. Although the Italian national court considered that the legislation in question discriminated indirectly against imported goods due to the particular nature of the Italian market, the Court refused to consider this issue when deciding whether or not the measure had the same *de facto* effect on domestic and imported products.

III

As regards **the free movement of persons** the Court has delivered three rulings concerning the public service exemption under Article 48(4) EC in Case C-173/94 *Commission v Belgium*, Case C-473/93 *Commission v Luxembourg* and Case C-290/94 *Commission v Hellenic Republic* delivered on 2 July 1996. The three cases concerned access to a number of posts in areas including research; education; health; inland transport; posts and telecommunications; water, gas and electricity distribution; and music. In conformity with its previous case law, the Court pointed out that in determining whether or not posts fall within the scope of application of Article 48(4), it is necessary to consider whether or not they typify the specific activities of the public sector, in so far as they involve the exercise of power conferred by public law and responsibility for safeguarding the general interests of the State or of other public bodies. Therefore, before deciding whether or not Article 48(4) is applicable, it is necessary to take into consideration the nature of the tasks and responsibilities inherent in the post. The Court considered that the Commission was competent to exclude entire areas from the Article 48(4) derogation and that it was not necessary for it to examine the posts concerned on a case by case basis. Although Luxembourg argued that, in view of the size of the country and its specific demographic situation, it was necessary for teachers to be Luxembourg nationals in order to transmit traditional values, the Court refused to exclude primary school teachers from the scope of Article 48. That refusal was not shaken by considerations relating to the preservation of national identity in a demographic situation as specific as that prevailing in the Grand Duchy of Luxembourg.

IV

Article 52 EC on the **freedom of establishment** has been used by the Court of Justice to ensure that non-resident taxpayers are treated in the same way as resident taxpayers. In case C-107/94, *Asscher* of 27 June 1996, the Court of Justice was asked a number of questions concerning Dutch legislation which was applying a higher rate of tax to non-residents than to residents pursuing the same activity. In its reply, the Court first pointed out that although direct taxation falls within the competence of the Member States it must nevertheless respect the provisions of Community law and avoid any discrimination for reason of nationality. Although the national legislation at issue applied equally to natinals and non-nationals, it was likely to have a disproportionate effect on the latter group. As a result, and in view of the fact that there was no objective difference between the situation of resident and non-resident taxpayers which was capable of justifying the difference in treatment, the Court held that the Dutch legislation constituted an infringement of Article 52 EC.

Article 52 was again at issue in Case C-101/94, *Commission v Italy* of 6 June 1996 which concerned an Italian law obliging dealers in transferable securities to have their registered offices on Italian territory. In its judgment, the Court acknowledged that freedom of

establishment is to be exercised under the conditions laid down by the law of the country of establishment for its own nationals, and that those national conditions may demand that the exercise of a specific activity is restricted and subject to particular rules or supervision. In this respect, the Court emphasized that Article 52 prohibits not only direct discrimination against nationals of other Member States, but also all national rules which are liable to place EC nationals from other Member States in a less favourable legal or factual situation than that of a national of the State of establishment. The Court considered that the Italian legislation did discriminate against dealers from other Member States in so far as it prevented them from using certain forms of secondary establishment, and it caused them to incur additional costs which Italian dealers did not have to bear. Although Italy tried to argue that the rules were justified on the grounds that it was not possible to compare the rules on access to the profession of securities dealer in the various Member States and that the location of the dealer' s principal establishment on Italian territory was the only means of supervising and eventually sanctioning the dealers, the Court refused to accept this argument. From the judgment, which should be read together with Case C-55/94, *Gebhard* ([1995] ECR I-4165) concerning similar rules applicable to lawyers, it can be concluded that it is not sufficient that the residence requirement facilitates the supervision and control of the operators if there are other ways of attaining this objective. The Italian law was also contrary to Article 59 EC because it precluded dealers from other Member States from providing their services in Italy.

V

As far as the **free movement of services** is concerned, the Television without Borders Directive' (89/552) came up for consideration by the Court in Case C-11/95 *Commission v Belgium* and Case C-222/94 *Commission v UK*, both of which were decided on 10 September 1996. In these cases the Court was asked to interpret Article 2(1) of the Television Directive which provides that each Member State shall ensure that all television broadcasts transmitted by broadcasters under its jurisdiction comply with the law applicable to broadcasts intended for the public in that Member State (the principle of one-control only). Furthermore, the Court was required to interpret Article 2(2) of the Directive on the Member States' obligation to ensure freedom of reception of broadcasts and that retransmissions on their territory shall not be restricted. In the case against Belgium the Court held that, by maintaining in the French speaking region a system of prior authorization for the retransmission by cable of television broadcasts emanating from other Member States, Belgium was in breach of Article 2(2) of the Directive. In reaching this conclusion the Court classified cable distribution as an activity which comes within the scope of the Directive. In addition the Court emphasized that it is for the Member State from which the television broadcasts emanate to monitor the application of the law of the originating Member State applying to such broadcasts and to ensure compliance with the Directive. The receiving Member State does not have the right to exercise its own control in thisrespect (see *Hedley Lomas* above). While the Directive provides that the receiving Member State may exceptionally suspend retransmission, this right may only be exercised under the circumstances mentioned in the relevant Article. Generally speaking, the receiving Member State has no right to exercise secondary control. Finally, the Court also found that Belgium had failed to fulfil its obligation under the Television Directive concerning three other, to some extent similar, systems of prior authorization.

At issue in the case against the UK was the definition of the term jurisdiction' used in the phrase broadcasters under [the] jurisdiction [of a Member State]' which appears in the first indent of Article 2(1) of the Directive. While the Commission argued that jurisdiction depends on where the broadcaster is established, the UK claimed that it depended on the Member State from whose territory the broadcast was transmitted. In its decision, the Court looked to the purpose of the rule on jurisdiction, which is to make sure that a Member State ensures that all television broadcasts made by broadcasters under its jurisdiction comply with the law applicable to broadcasts in that Member State, including the provisions of the Directive. On

this basis the Court considered that jurisdiction cannot depend on the place from which the broadcast is transmitted and that only the jurisdiction *ratione personae* over television broadcasters can be decisive. Consequently, UK legislation which covered the transmission of foreign satellite programmes was contrary to the Directive.

The Television Directive, and especially the aforementioned Article 2(2), will be interpreted by the Court in Joined Cases C-34/95, C-35/95 and C-36/95 *Konsumentombudsmannen* (see Advocate General Jacob' s Opinion of 17 September 1996). This case concerns the compatibility with Community law of restrictions on television advertising imposed by national law.

VI

a) The EEC-Turkey Association Agreement concerning the application of the **social security schemes** of EC Member States to Turkish workers and to members of their families was considered in Case C-277/94 *Z.Taflan-Met* of 10 September 1996. Various Dutch social security benefits were being withheld from Turkish workers on the grounds that the insured risk did not materialize when the person concerned was covered by the legislation. While the Dutch court considered that the plaintiffs could qualify for the benefits under Decision No. 3/80 taken in the framework of the Association Agreement, it was uncertain as to whether the Decision had entered into force as the date of implementation had not been specified. In its decision, the Court of Justice ruled that Decision No. 3/80 entered into force on the date on which it was adopted and had been binding on the contracting parties since that time. In its second question the Dutch court asked the Court whether the Decision, and more particularly Articles 12 and 13 thereof, could have direct effect. The Court considered that this was not possible given the fact that the Decision did not contain a sufficient number of precisely detailed provisions and was intended to be supplemented in the Community by a subsequent act of Council.

b) The issue of **equal treatment of men and women** came before the Court in Case C-228/94 *Atkins* of 11 July 1996. This case concerned provisions of the Transport Act of 1985 which empowered local authorities to offer free or reduced-price travel to women over 60 and men over 65. Mr Atkins alleged that this constituted discrimination on grounds of sex contrary to Directive 79/7/EEC. The first question put to the Court was whether the discrimination fell within the scope of the Directive. According to the established case law of the Court, before a benefit falls within the Directive it must constitute the whole or part of a statutory scheme and, secondly, thebenefit must be directly and effectively linked to the protection provided against one of the risks specified in Article 3(1) or a form of social assistance with the same objective. The Court felt that since the concessionary fare scheme was based on a statutory provision it formed part of a statutory scheme. This was so despite the fact that the local authorities were under no duty to implement a concessionary fare scheme, and retained discretion as to the beneficiaries entitled to concessions, and despite the fact that the scheme was not formally part of the national social security rules. Having established that the scheme came within the scope of the Directive, the Court went on to consider whether it provided direct and effective protection against one of the risks specified in Article 3(1). The Court held that this was not the case. In the first place, the Court emphasized that old-age and invalidity were only two of the criteria which could be applied to define the class of beneficiaries. In addition, the Court recalled that the fact that a recipient of a benefit was within one of the situations envisaged in Article 3(1) was not sufficient to bring that benefit within the scope of the Directive. Similarly, the fact that the scheme at issue in the case only benefitted classes of persons who were in situations envisaged by Article 3(1) did not bring that local scheme within the scope of the Directive. Finally, the Court rejected Commission argument that the scope of the Directive extended beyond provisions concerning social security and social assistance to cover social protection as a whole.

VII

In the field of **state aids,** the Court' s judgment in Case C-39/94 *La Poste* of 11 July 1996 is very important. The case concerned the legality of the substantial logistical and commercial assistance afforded by *La Poste* to SFMI and Chronopost, which are two companies governed by private law and controlled by *La Poste* itself. While the Commission had been asked to consider whether the assistance constituted an illegal state aid, the issue had also arisen before a national court. The national judge asked the Court of Justice whether he should declare: that the national court (1) had no jurisdiction; (2) that the proceedings would be stayed until the Commission had adopted its decision; (3) that the national court had jurisdiction and then safeguard the rights of individuals if there was an infringement by the State. The national judge also asked whether the fact that the Commission had considered the case for more than two years should have any bearing on his decision concerning jurisdiction. The Court first described the system applicable to state aids in the Community and the respective roles of the Commission and the national courts in putting that system into effect. The competence of the national courts arises because the prohibition on the implementation of planned aid laid down in the last sentence of Article 93(3) is directly applicable. On this basis the Court stated that if Article 93(3) is invoked then the national court may rule on the issue even if the matter is also being considered by the Commission, and that the national court is under no obligation to stay the proceedings. If the national court is unsure as to how to interpret the concept of state aid then it should consult either the Commission or the Court of Justice with respect to this matter. In relation to the assistance at issue in the case, the Court stated that such assistance could constitute a state aid. In determining this issue, the decisive question is whether the remuneration received in return is less than that which would have been demanded under normal market conditions. In response to the last question posed by the national court, the Court of Justice ruled that under Community law the recipient of the aid will not incur liability for failing to verify that the aid received was notified to the Commission. However, there is nothing to exclude he application of national law concerning non-contractual liability in such circumstances

VIII

In the field of EC environmental law, the Court of Justice has once again been called upon to interpret the provisions of Council Directive 79/409/EEC on the conservation of wild birds. In Case C-44/95, *Regina v Secretary of State for the Environment, ex parte Royal Society for the Protection of Birds* of 11 July 1996 the Court shed further light on the extent to which a Member State may take economic requirements into account when designating a Special Protection Area (SPA) pursuant to Article 4(1) and 4(2) of the Directive, and the relationship between the Wild Birds' Directive and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. In relation to the first point, the Court emphasized that a Member State is not permitted to take account of the economic requirements mentioned in Article 2 when designating a SPA and defining its boundaries. Furthermore, although when designating a SPA Member States are entitled to take account of general interests superior to that represented by the ecological objective of the Directive, economic requirements can never correspond to a superior general interest in this context. The second issue in the ruling concerned Article 6(4) of the Habitats Directive which widens the range of grounds which justify encroaching upon SPA and expressly includes considerations of a social or economic nature within these grounds. In this respect the Court held that although Article 6(3) and (4) of the Habitats Directive amended the first sentence of Article 4(4) of the Birds' Directive, this merely means that Member States may go back on a decision classifying an area by reducing its extent. It does not make any amendment regarding the initial classification of an area as a SPA and this must still be carried out in accordance with the criteria set out in Article 4(1) and (2) of the Birds' Directive.

IX

In relation to **public procurement**, three Member States have been condemned by the Court for failing to comply with Directive 92/50 with respect to the coordination of procedures for the award of public service contracts. See Cases C-234/95 *Commission v France*, C-253/95 *Commission v Germany* and C-311/95 *Commission v Greece*, all of which were decided on 2 May 1996. Furthermore, on 19 September 1996, the Court held that Greece had failed to comply with Directive 89/665 on the review procedures to be applied to supply and works contracts.

X

As regards **institutional issues**, the Court protected the Parliament' s prerogatives in Case C-303/94 *Parliament v Council,* of 18 June 1996. In the case the Court held that the Council could not add an Annex to Directive 91/414 concerning the placing of plant protection products on the market by adopting a new Directive. The Court considered that the Council could not adopt a new Directive which modified the scope of the obligations imposed on the Member States by the basic Directive, without following the appropriate legislative procedure.

XI

In his opinion of 27 June 1996 in Joined Cases C-192/95 to C-218/95 *Comateb*, Advocate General Tesauro argued that the Court should change its case law concerning the Member States' right to avoid refunding a tax or duty collected contrary to EC law if the individuals who have paid the illegal tax have obtained an equivalent amount from, for example, the customers. If the Court follows the Advocate General, this will mean that Member States will have to reimburse taxes collected contrary to EC law even when this leads to the unjust enrichment of the taxpayer concerned. Such a change in case law could have important economic implications for several Member States and might place a double burden on the consumer who would have to pay the increased cost of the product and ultimately the reimbursement itself.

XII

A number of other interesting cases have also been decided by the Court. These include Case C-84/95 *Bosphorus* of 30 July 1996, which concerns the implementation of economic sanctions against the Federal Republic of Yugoslavia. It should be noted that Case C-177/95 *Ebony Maritimes still pending. On 24 September 1996, Advocate General Jacobs delivered an interesting opinion concerning the effect of the Community' s common commercial policy in Case 124/95 Centro-Com.*