Institut Européen
d'Administration Publique

European Institute
of Public Administration

EIPASCOPE

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Peter D. Sutherland, "M.O.P" ("Most Outstanding Person")

Eric F.Ch. Niehe

On behalf of the Netherlands Members of the Board of Governors

Our former Chairman of the Board of Governors has really carved out a niche for himself in the process of European Integration. Member of the European Commission, recipient of the Gold Medal of the European Parliament, of the First European Law Prize and of the Robert Schuman Medal, European Person of the Year (Ireland) and Chairman of the Committee which reported to the European Commission on the functioning of the Internal Market are some of the manifold distinctions that have been bestowed upon him. On top of all this, he has even managed to carve out a niche for himself on the world stage, as Director-General of GATT.

Peter Sutherland did the European Institute of Public Administration proud by accepting the Chairmanship of the Board of Governors of EIPA and retaining the Chair for five years.

During that period EIPA has secured its position as an institute renowned in Europe and far beyond. All fifteen Member States of the European Union now have a cooperation agreement with EIPA and have pledged their official support and recognition to it. Furthermore, and not unimportantly, EIPA's financial position has been improved and consolidated, including due to a budget line within the EU-budget. This was all possible thanks to the eminent leadership and tireless efforts of Peter Sutherland. In addition the effectiveness of former Vice-Chairman David Williamson and the excellence of former Director General Spyros A. Pappas contributed to that success.

With regard to EIPA's financial position and the Netherlands' contribution to it as host country, I trust I am allowed a personal reflection. During my term as the Ambassador of the Netherlands in Dublin I had already come to know Peter Sutherland as a person who has the capability of being in the right place at the right time with the right message in the right manner. This quality came to the fore once again in 1995 when the Government of the Netherlands considered significant restructuring of its general subsidisation policy. Practically all subsidies, including the annual subsidy EIPA had been receiving since it was established in 1981, were to be reduced or discontinued entirely. In spite of his formidable workload during that time as the person who had to bring the Uruguay-round negotiations to a successful conclusion, Peter Sutherland nevertheless found time to come to The Hague to meet Prime Minister Kok and several other members of the Netherlands Council of Ministers to deliver a most convincing message. The positive result for EIPA was that the Government decided to exempt EIPA from the general reduction in subsidies. Right place, right time, right message, right manner indeed!

Peter Sutherland has now decided that other duties call. He has returned to the financial world, as Chairman of Goldman Sachs. Goldman Sachs is known to be a hard working, well disciplined and well organised company. Attributes which will certainly make Peter Sutherland feel at home.

Ireland has brought forth many outstanding persons. I have come to know Peter Sutherland as an "M.O.P", a most outstanding person! May he long continue to enjoy all success and happiness in his professional and private life. ❑

The Black Sea Economic Cooperation Process

Ines Hartwig
Lecturer, EIPA

Among the different initiatives for regional cooperation in central and eastern Europe, which were launched after the sea changes in 1989, the Black Sea Economic Cooperation Process represents a special type of cooperation because it includes a Member State of the European Union (Greece), states which are associated with the EU (Bulgaria, Romania and Turkey) and states which have signed a Partnership or Trade and Economic Cooperation Agreement with the EU (Albania, Armenia, Azerbaijan, Georgia, Moldova, Russia and Ukraine). The Black Sea Economic Cooperation Process is built around three main areas of cooperation:

- governmental: the Black Sea Economic Cooperation;
- parliamentary: the Parliamentary Assembly of the Black Sea Economic Cooperation;
- financial: the Black Sea Trade and Development Bank.

The Black Sea Economic Cooperation (BSEC)

Dating back to a Turkish initiative of 1990, the BSEC was founded in June 1992 with the 'Summit Declaration on Black Sea Economic Cooperation' and the 'Bosphorus Statement' signed by the Heads of State or Government of the above mentioned eleven countries.

Whilst the Bosphorus Statement defines the BSEC's broader political framework, the Summit Declaration outlines the scope of cooperation which will focus on trade and economic matters but will also include areas such as environment and infrastructure as potential areas of cooperation. Although the BSEC is very much oriented towards economic cooperation it is, unlike, for example, the Central European Free Trade Area, not aiming at gradually establishing a free trade zone between the Participating States, but is only geared 'to develop comprehensive multilateral and bilateral Black Sea economic cooperation'.[1]

Legal base

The BSEC does not constitute a regional organization in a legal sense since it is not based on an agreement binding under international law. The BSEC still bases its cooperation on the 'Bosphorus Statement' and the 'Summit Declaration on Black Sea Economic Cooperation' and other solemn declarations signed at summit meetings in Bucharest and Moscow in subsequent years.

In the last two years, however, some Participating States have expressed their interest in upgrading this basis of the cooperation from a mere political to a legally binding document. Although a statement of the political will to draft this international agreement, which would have to be ratified by the Participating States according to their constitutional provisions, has since been included in several official declarations it can be expected that it will still be some years yet until such a document is ready for signing.[2] Moreover it is doubtful whether all eleven Participating States would join in this initiative.

Membership of the BSEC

At first glance the name of this cooperation agreement, Black Sea Economic Cooperation, suggests that one pre-condition of joining the BSEC is to be a state which borders on the Black Sea. However, since not even all founding states of the BSEC themselves border on the Black Sea, the reference to the Black Sea seems to refer to a geographically rather loosely defined area. Also the declarations establishing the BSEC do not entail any condition of membership for states interested in joining the BSEC other than that they have to recognize the provisions of the Summit Declaration on Black Sea Economic Cooperation. Therefore the BSEC appears to be an initiative open to all those states who are interested in joining it. The only really strict criteria for becoming a member of the BSEC seems to be the fact that the Participating States have to approve the accession of a new state. A number of states have already applied for membership such as the Federal Republic of Yugoslavia, the Republic of Macedonia, Iran, and Uzbekistan. [3] However, when looking at the divergent interests of the current BSEC states it is rather doubtful that it will find it easy to reach agreement on applications submitted by these states.

Once a state is a full member of the BSEC club it is not committed to becoming involved in all BSEC projects.[4] This approach is guided by the pragmatic aim of cooperating as closely as possible without there being any obligation on BSEC states to support projects which are of no interest to them. Considering the political situation in, and the relations between, the BSEC states, any attempt which would go beyond pragmatic economic and functionally oriented cooperation would not be successful at this stage.

This does, however, not exclude discussions between the BSEC states on political issues such as the crisis in Transnistria (Moldova) which has been the subject of discussion between the states involved and Turkey. These discussions laid the foundations for an appeasement of this conflict.[5] Another, more recent, example in this respect are the relations between Greece and Turkey. At the BSEC meeting in Bucharest in June 1996 the Foreign Ministers of Greece and Turkey expressed their wish 'not to burn the bridges between them although, this does not yet mean an official dialogue will be initiated'.[6] Of course, this does not turn the BSEC into a political cooperation organization but it shows its potential in this respect.

An option for other states or international organizations to become more involved in BSEC activities, without however being a fully fledged BSEC state, is to join this

cooperation initiative as an observer.[7] Quite a few states such as Egypt, Israel, Italy, Austria, Poland, Slovakia, and Tunisia have availed themselves of this possibility.[8] This status basically allows the respective state to be present at meetings on a regular basis and to obtain a copy of all officially adopted documents.

Decision-making structure

The body which gives the political impetus and defines the guidelines for future cooperation at BSEC level is – as in the case of the European Union – the meeting of the Heads of State or Government which takes place on a non-regular basis in different capitals of the BSEC states. After the first meeting in Istanbul in June 1992, it was another three years until the second meeting, which was held in Bucharest in June 1995. A third high-level meeting took place in Moscow in October 1996. These summit meetings are not part of the regular decision-making structure of the BSEC but they nevertheless play an important role in confirming the will of the Participating States to further cooperate and to define, for example, some priority areas of cooperation.[9]

The official decision-making body of the BSEC is the Meeting of Ministers of Foreign Affairs (MMFAs) which convenes on a regular basis, normally twice a year and at which every Participating State is represented and has one vote.[10] Eight of these meetings have been held to date.[11] The meetings are chaired by, and held in the country which holds the office of the chairman. Custody of the chairmanship goes in turn to each BSEC State for a term of six months in alphabetical order. Unlike the European Union, however, the chairmanship's term is handed over respectively in May and November.[12]

The ministers can adopt resolutions, decisions or recommendations which differ from each other in three respects:

a) The majority required for their adoption: whilst a resolution is in effect adopted by unanimity, decisions and recommendations can be adopted by a simple majority of the Participating States.
b) Their binding character: although none of the three instruments is binding for the States, all Participating States shall abide by the resolutions.[13] Decisions shall only be respected by those states which have agreed to it and recommendations are merely expressions of political intent. However, considering the fact that the BSEC is based only on declarations which are not even binding under international law, the structure of the BSEC evidently does not provide for any sanctions or measures in the event that a Participating State does not comply with its commitments resulting from resolutions.[14]
c) Their subject matter: Resolutions should deal mainly with substantial questions concerning the structure and working methods of the BSEC. Decisions should deal rather with issues of a more technical nature. In practice however and irrespective of this differentiation, the Ministers tend rather to adopt resolutions than decisions or even recommendations.

The Ministers' meetings are prepared by about 20 different standing working groups and expert committees. They meet on a non-regular basis in different places depending on which country is willing to host their meetings. The working groups submit their reports to the Senior Officials Meeting which is a collective body representing the Ministers of Foreign Affairs of the BSEC States. The Senior Officials meet at least four times a year. The major task of this body is to coordinate the work of the subsidiary bodies and to prepare the MMFAs.

This description of the decision-making and organizational structure needs however to be complemented by some further comments in order to arrive at a more or less realistic picture of the current state of development of the BSEC.

– *Firstly* the task of the working groups is not always defined very accurately so that the competences of the different working groups partly overlap.[15] The mandate of other working groups was sometimes not clearly defined so that, in fact, some of them such as the ad hoc Working Group on Travel of Individuals from the Business Community or the ad hoc Working Group of Experts on Promotion and Protection of Investment have only met once or twice since they were established.
– *Secondly*, it is rather difficult sometimes for working groups to meet because Participating States are reticent to host the meetings for them. This reticence is more connected to the BSEC states' reluctance to make the effort to organize the meeting rather than with the financial burdens involved because the delegations themselves and not the host country bear the costs relating to the working group meetings.
– And *thirdly*, the representatives who were being sent to the meetings were not sufficiently well prepared and were sometimes very junior and therefore not able to take any, even quite basic, decisions.

In response to this criticism, in October 1996 the Foreign Ministers decided to reform the decision-making and organizational structure.[16] The main elements of this reform are a considerable reduction in the number of Working Groups and an upgrading of the Senior Officials meeting.[17] Although this reform still needs to be implemented, it is doubtful whether it will lead to solving the current problems since they mainly stem from a lack of commitment of the Participating States to the BSEC's initiative than from the structure as such. If the Participating States are not willing to devote reasonable human resources to this means of cooperation, the BSEC will continue to work inefficiently and, to a certain extent, ineffectively.

Budget

As regards the financial contributions to the BSEC budget the Foreign Ministers agreed upon certain quotas for each Participating State.[18] However, these quotas only apply from the year 1998 onwards. For the previous years special rates have been used since Turkey had agreed to contribute to the budget with an unproportionally large share. It can be expected that the changes to the financial system will lead to some adjustments to the financial contributions of the Participating States. The Ukraine has already expressed reservations about its placement in the Group contributing the largest share and has indicated that it cannot fulfil its financial obligations resulting therefrom in 1998.

Permanent Secretariat

The BSEC process is supported by a Permanent International Secretariat, located in Istanbul. The Secretariat plays a very important role since it is responsible for the practical coordination between the different levels of cooperation and it collects and compiles information which is needed to develop particular cooperation projects. In spite of this great importance attached to the work of the secretariat it is still too weak to be an effective powerhouse for the cooperation process since its staff comprises a very limited number of civil servants from different BSEC states – not exceeding ten persons or so and some supporting staff.[19] Even though the BSEC is not aiming at comprehensive cooperation it would be necessary to provide the secretariat with more professional staff even if it is only to allow it to fulfil its current tasks.

Achievements

Considering the political and economic divergence of the countries involved and the fact that the BSEC was only founded four years ago it is not surprising that the measurable results of this cooperation are rather modest thus far. However, it is important to note, that already a certain concentration on certain policy areas is apparent. Some of the most important are outlined below:

- Infrastructure: A project which began almost at the very start of the BSEC project was to compile a map of roads, railways, ports and shipping connections in the BSEC region. This task has been accomplished after two years. Moreover, also in line with the BSEC's strategy to improve its relations with international organizations and non-aligned states, the first joint Conference of the Ministers of Transport of the BSEC States and the Central European Initiative took place on 20-22 November 1996. [20]
- Investment and business undertakings: A number of conferences have taken place and recently a document was adopted which outlines 'Basic principles of Investment collaboration in the Black Sea Economic Cooperation Region'. [21] However, it is stressed that these principles are not binding for the States which approved this document.
- Matters relating to internal affairs: Although this policy area does not fall within the original scope of the BSEC cooperation project it has increasingly been taken up as an area of potential cooperation. The Ministers of Internal Affairs of the BSEC states which met in Yerevan in October 1996 for the first time adopted a joint statement expressing their will to strengthen cooperation in areas such as combating organized crime, terrorism, illicit drug dealing and illegal migration.[22]

The reasons for the lack of concrete results are, however, only partly due to the fact that the BSEC was founded only four years ago. Another important reason is that nearly all Participating States are undergoing severe economic transition processes. Their internal political situation is often not secure. Moreover the BSEC, unlike the cooperation of individual BSEC states with the European Union, does not have an overall positive image. Therefore, in some countries there might exist a national consensus on future membership of the European Union,[23] but this does not, likewise, apply to membership of the BSEC.

Parliamentary Assembly of the BSEC (PABSEC)

In February 1993, thus only eight months after the BSEC had been established, the speakers of the national parliaments of the BSEC states signed an agreement to establish a Parliamentary Assembly which should complement and support the intergovernmental cooperation of the BSEC.[24]

Membership of the PABSEC and relations with the BSEC

Initially only nine of the eleven BSEC states participated in this initiative. In June 1995, Greece joined PABSEC as its tenth member; Bulgaria still attends the PABSEC meetings only as an observer. As regards new members of PABSEC, although neither the agreement establishing PABSEC nor its Rules of Procedure indicate clearly whether membership of PABSEC is limited to BSEC states or not, it can be assumed that PABSEC is only open to BSEC states since the task of PABSEC is, among others things, to urge 'national parliaments of the Participating States to enact legislation needed for implementation of decisions taken' at BSEC level.[25] Observer status with PABSEC, however, is granted independently of the BSEC.[26]

In a formal sense the BSEC and PABSEC are two separate cooperation structures. However, PABSEC has always expressed its interest in closer cooperation with the BSEC. Even in its founding declaration of February 1993, PABSEC aimed its objectives at the principles and goals embodied in the Summit Declaration adopted in Istanbul. Due to the fact that the BSEC was very hesitant to establish formalised cooperation structures, only some guidelines were adopted in April 1996 – guidelines which should help to build an organizational bridge between the two structures.[27] These guidelines firstly formalize the currently informal practice of exchanging information and sending, upon invitation, representatives of BSEC and PABSEC to meetings of the other body respectively. Secondly, as a new element, these guidelines open up the opportunity of officially organizing joint meetings at different levels. Although these guidelines can be considered as a step towards a more coherent organizational structure they still leave the BSEC and PABSEC as formally separate initiatives.

Organizational and decision-making structure

PABSEC is composed of 70 members, who are all members of national parliaments of the BSEC states. The number of seats per country is calculated on the basis of the size of the country's population. The smallest delegations comprise four members (Albania, Armenia, and Moldova) and the largest delegation comes from Russia which sends 12 members.

Since its first meeting in Istanbul in June 1993, PABSEC has met regularly twice a year in different cities.[28]

PABSEC has established three permanent committees covering broadly economic, political and cultural issues. The committees submit reports and draft recommendations to the PABSEC plenary session which approves the reports and adopts the recommendations by absolute majority. As

a result of the fact that PABSEC and BSEC formally constitute two distinctive cooperation structures, the recommendations of PABSEC are not officially taken into consideration by the BSEC.

The voting procedure applied within PABSEC, which was subject to criticism from some PABSEC members as not being properly democratic,[29] takes into consideration the great political sensitivity between the PABSEC states. Votes on subject matters are not held on the basis of every individual parliamentarian having a vote but only on a basis of delegations which then have one vote each. Individual votes where every Parliamentarian has one vote are only held on matters involving personnel e.g. the election of the president or the treasurer of PABSEC. [30] This rule is unfortunate for two reasons: First, it does not take into consideration the different size of the delegations. Hence the vote of e.g. the Russian or the Turkish delegation counts as much as the vote of the Albanian or Armenian delegation. Second, and more important, in view of the political culture within PABSEC, there is a great risk that opposition members within delegations, who may have different views on certain matters from their colleagues from the ruling party, cannot even express their stance in votes because usually the government representatives will form the majority within a delegation.

As is the case with the BSEC, PABSEC is also served by a Permanent International Secretariat located in Istanbul in the same building as the BSEC secretariat and with a similarly limited personnel.

Budget

Financially, PABSEC – as is the case with the BSEC – is still largely dependent on Turkey which financed the entire budget of PABSEC up to 1995. From 1996 onwards the PABSEC states will start contributing to the PABSEC budget. The aim is, over a period of time, to make the share of each PABSEC state, as close as is possible, equal to its BSEC share.[31]

Achievements

So far PABSEC has not focused on priority areas and, as such, it has not followed the same path of development as the BSEC. In its recommendations it has addressed issues ranging from legislative harmonisation among BSEC States to the improvement of customs regulations among the BSEC States, the coordinated fight against organized crime and cooperation among the PABSEC Member Countries to improve education. In its session in Ankara in November 1995, when it reviewed the implementation of its recommendations, the parliamentarians strongly called for concrete action at national level on the areas in question.[32] But, as PABSEC cannot exert any power through the BSEC, it is unlikely that the Ministers will react to this call for action. PABSEC's main source of influence derives from the fact that it consists of national parliamentarians who can – when back in their national parliaments – exert influence on their respective governments.

Therefore, the main interest of PABSEC members seems to be concentrated on informing each other about the current situation in PABSEC states with respect to the issue being discussed. Whether this will lead to an increased awareness of this avenue of cooperation amongst parliamentarians when they go back to their national political systems is still an open question.

The Black Sea Trade and Development Bank (BSTDB)

The plan to create a BSEC Bank was first mentioned in the summit declaration adopted in 1992. However, it took two more years to draft the agreement establishing the Bank which was then signed by the Foreign Ministers at their meeting in Tbilisi in June 1994. The purpose of the BSTDB, located in Thessaloniki, Greece, is to contribute effectively to the transition process of the Member States towards economic prosperity of the region and to finance and promote regional projects, trade activities, investment or development programmes and other banking services for the public and private sectors in the Member States.

As of September 1996 seven of the eleven BSEC states had ratified the agreement. However, since only two of them, Greece and Romania, have fully completed the ratification process the Bank was still not operational by the end of 1996. The agreement establishing the Bank stipulates one billion Special Drawing Rights as the Bank's founding capital, if all countries subscribe their maximum number of shares indicated in the agreement.[33]

Legal status and organizational structure

Unlike the BSEC and PABSEC which do not have a solid legal base for their cooperation agreement, the Bank is an international organization like the European Bank for Reconstruction and Development (EBRD). It is governed by a Board of Governors. Every Member State of the Bank is represented on the Board by a Governor and an Alternate Governor. The competences of the Board of Governors are wide ranging and cover, inter alia, the power to amend the Bank agreement and (temporarily) suspend Member States if they do not meet their commitments resulting from the agreement.[34] Decisions on these issues require a unanimous vote of the Board. Unlike the vote in the MMFAs the votes of each of the Governors are weighted according to the financial contribution of each Member State to the Bank's founding capital. The Board of Governors elects a President from among its number.[35]

As regards the (in)dependency of the Bank from/on its Member States, the Agreement remains ambiguous. On the one hand the Agreement states that 'each Governor and each Alternate Governor shall serve at the pleasure of the appointing Member'.[36] On the other hand it says that the Bank in general, the Board of Directors[37] and the staff of the Bank in particular 'shall, in their decisions, take into account only considerations relevant to the Bank's purpose, functions, and operation as set out in this Agreement. (...) Each Member of the Bank shall respect the international and *non-political character* of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.'[38]

Achievements

Since the Bank is not yet operational, we cannot assess its impact on the BSEC and cooperation between the BSEC states. However, for several reasons the Bank constitutes a special element within the Black Sea cooperation structure which has the potential to give further impetus to the cooperation agreement.

- Firstly the Agreement establishing the Bank requires ratification according to the constitutions of the BSEC states. It will then be an agreement binding under international law.
- Secondly the Agreement establishes a close link between the financial contribution of each Member to the Bank and its voting power in the Bank's decision-making bodies, i.e. the Board of Governors and the Board of Directors. In other words, the larger the number of shares a Participating State has, the more say it has on the Board of Governors and the Board of Directors.
- Thirdly, the Agreement establishes a close and direct link between the full completion of the ratification process in a Member State and the carrying out of its financial commitment resulting therefrom. And, on the other side of the coin, the Agreement provides for sanctions in the event that a Member State does not meet its financial commitments resulting from the Agreement. In such a case that percentage of the Member State's voting power corresponding to that percentage of the amount unpaid cannot be exercised.
- Fourthly the Bank is financially supported by the European Union. At the request of Greece, the European Commission agreed to allocate ECU 250,000, through its Tacis and Phare budgets, to finance the 'business plan' to get the Bank fully operating.[39]

Although the above would suggest that the Bank could contribute to more intensified cooperation between the BSEC States, it will nevertheless be of crucial importance that the Bank be able to maintain a certain distance from the political interests of individual Participating States since – as the BSEC process has already shown – financial issues have to be handled with at least as equal a sensitivity as political issues.

Future Prospects

When considering existing political tensions among the BSEC States it can be assumed that the BSEC process will keep its current combined approach of a flexible organizational structure on the one hand and concentration on concrete cooperation projects on the other hand. But this flexibility, though necessary in the light of the political instability existing in the region, should not be confused with non-commitment of the Participating States.

The first few years of cooperation were characterised by a very low degree of commitment from the majority of the Participating States. This has to be changed in order for such cooperation to be on a sounder basis in any future projects. Some aspects which would be evidence of a deeper commitment to flexible cooperation are outlined below:

- *Firstly*, the cooperation between the States should be reinforced under a legally binding agreement to be ratified by the BSEC States. This would increase the credibility of the cooperation agreement both internally and *vis-à-vis* third party states. The ratification process would bring the BSEC to the more prominent notice of the national political elite which might encourage discussion on the national interest the respective state can pursue in the BSEC.
- *Secondly*, if such cooperation should lead to concrete results, even only in very selective and particular projects, the regular and institutionalised follow-up of resolutions adopted by the Ministers of Foreign Affairs should be established. This could have the effect that regulations would not so much deal with political questions but focus more on specific cooperation projects of a rather technical nature.
- *Thirdly*, in order to meet the democratic ambitions of a number of Participating States it would be advisable to establish a coherent structure between the BSEC and PABSEC which includes a formalised exchange – and not only on an ad hoc basis – of information and which confers on parliamentarians the right to ask questions of the BSEC governments.
- The *fourth* and final aspect is geared to the international community in general and to the European Union in particular. Although the European Union has expressed its will to support regional cooperation, in the case of the BSEC process it has been rather hesitant to do so.[40] This is surprising especially when we consider the fact that Greece, being both a member of the BSEC and the European Union, considers itself a bridge between these two cooperative entities with a view to facilitating exchange between them.[41] Moreover, two other Member States of the European Union, viz. Austria and Italy, hold observer status with the BSEC. This lack of continuous support can be explained by the fact that the European Union has not yet established a coherent overall strategy towards regional cooperation in central and eastern Europe including the BSEC process. Currently two BSEC States (Bulgaria and Romania) which are active within and committed to the BSEC process are aiming to join the European Union in the foreseeable future. Especially with regard to the associated countries' stance towards the BSEC process it is of crucial importance how the European Union defines its position towards this regional cooperation initiative. Should the BSEC prove either to turn into a long-term waiting room for these countries aiming at becoming a member of the European Union or if this cooperation initiative is not seen to have any positive advantage in their drive towards membership of or close cooperation with the European Union, it is rather unlikely that the BSEC process will develop into a reliable regional vehicle of cooperation since such countries, if not the others, will be very cautious in affording it further support. ❑

NOTES

1. Summit Declaration on Black Sea Economic Cooperation, Istanbul 25 June 1992, point 12.
2. See e.g. Moscow Declaration of the Heads of State of Government of the Participating States of the Black Sea Economic Cooperation adopted in Moscow on 25 October 1996, point 2.
3. See Resolutions adopted by the Eighth Meeting of the Ministers of Foreign Affairs, held in Moscow on 25 October 1996, Annex IV to BS/FM/R(96)2, point 39.
4. Very recently, in October 1996, a Memorandum on

Cooperation of the BSEC Participating States in the Field of Electric Power Industry was signed by only eight states. Bulgaria, Romania, and Turkey did not join this initiative.

5. Radio Bucharest, 26 June 1992.
6. Agence Europe, Nos 6718 and 6720, 1996.
7. Observer status is granted for a limited period of time which usually does not exceed two years.
8. Other countries such as Croatia, Cyprus, the Republic of Bosnia Herzegovina, Jordan, Kazakhstan, and Slovenia applied for observer status but this has not been granted to them as yet since no agreement could be reached. Although representatives of the European Commission and the European Union presidency often attend the MMFAs, the European Union has not applied to become an observer with the BSEC.
9. See Statement of the High Level Meeting of the BSEC Participating States, Bucharest on 30 June 1995.
10. The summit declaration on Black Sea Economic Cooperation only stipulates meetings of the Foreign Ministers at least once a year. However, up to now Ministers have mostly met twice a year.
11. In Antalya on 10 December 1992, in Istanbul on 17 June 1993, in Sofia on 9 December 1993, in Tbilisi on 30 June 1994, in Athens on 14 April 1995, in Chisinau on 1 November 1995, in Bucharest on 27 April 1996, in Moscow on 25 October 1996.
12. The following countries have held the chairmanship: Turkey (exceptionally for one year), Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Turkey.
13. Rules of Procedures of the BSEC, adopted at the Second Meeting of the Ministers of Foreign Affairs, held in Istanbul on 17 June 1993, BS/FM/R(93)1 Attachment I to Annex IV, Article 20.
14. The BSEC International Secretariat in particular regularly complains about the reluctance of Participating States to provide information necessary to implement a certain resolution or develop a concrete proposal.
15. The working groups are established by the MMFAs. It also defines their terms of reference.
16. Resolutions adopted at the Eighth Meeting of the Ministers of Foreign Affairs in Moscow, 25 October 1996, Annex IV to BS/FM/R/(96)2, point 26.
17. 'Streamlining of the BSEC Subsidiary Bodies', Background paper of the BSEC Permanent International Secretariat, Istanbul, 10 September 1996, BS/PM(96)3.Rev.1.
18. The respective quotas are the following: Group I: Greece, Russia, Turkey and Ukraine 16% each, Group II Bulgaria, Romania 8% each, Group III: Albania, Armenia, Azerbaijan, Georgia, Moldova 4% each. These quotas will be reviewed on the basis of how average GDP developed over the last five years.
19. Due to the ever greater specialisation of questions dealt with by the Working Groups, the Secretariat requested the Foreign Ministers to upgrade the Secretariat's staff with three additional experts who should be specialists in particular subject matters.
20. 'Cooperation of the BSEC Permanent International Secretariat with International Organizations and Institutions' Background paper prepared by the BSEC Permanent International Secretariat, Istanbul, 29 August 1996, BS/PM(96)2.2.
21. 'Recommendations adopted at the Eighth Meeting of the Ministers of Foreign Affairs in Moscow, 25 October 1996, Annex IV to BS/FM/R/(96)2, point 60.
22. Joint Statement adopted at the meeting of the Ministers of Internal Affairs of the BSEC Participating States in Yerevan, 17 October 1996, Annex IV to BS/IM/R(96)1.
23. This applies certainly to the two associated countries Bulgaria and Romania.
24. Declaration on the Establishment of the Parliamentary Assembly of the Black Sea Economic Cooperation, Istanbul on 26 February 1993, in: PABSEC, Biannual Bulletin of PABSEC, published by the PABSEC International Secretariat, Istanbul June 1994, p. 7.
25. Rules of Procedures of PABSEC, 1993, Aims.
26. The Rules of Procedures indicate a number of potential candidates for observer status with PABSEC among which are the following institutions: Parliamentary Assembly of the Council of Europe, the North Atlantic Assembly, the Inter-Parliamentary Assembly of the Commonwealth of Independent States, the European Parliament. Rules of Procedures of PABSEC, Article 10(4).
27. Resolutions adopted at the Seventh Meeting of the Ministers of Foreign Affairs in Bucharest, 27 April 1996, Annex IV to BS/FM/R/(96)1, points 13 and 14.
28. Up to the end of 1996 the PABSEC had met eight times in: Istanbul on 16-18 June 1993, Kiev on 29 November-1 December 1993, Bucharest on 20-22 June 1994, Tirana on 11-13 December 1994, Moscow on 5-7 June 1995, Ankara on 27-29 November 1995, Baku on 11-13 June 1996, Tbilisi on 10-12 December 1996.
29. Interview with Adrian Nåstase, Radio Bucharest, 25 February 1993.
30. Rules of Procedure of PABSEC, Article 16(1).
31. As Bulgaria is not a member of PABSEC and thus does not pay in to the PABSEC budget, the quotas for the PABSEC budget are different from those for the BSEC budget.
32. Recommendation 12/1995 on the Follow-up to the Implementation of Recommendations 1-11 adopted by the General Assembly since 1994, DOC.GA 1342/95.
33. The distribution of shares is as follows: Greece, Russia, Turkey 16,5% each; Bulgaria, Romania, Ukraine 13,5% each; Albania, Armenia, Azerbaijan, Georgia, Moldova 2% each. If one country does not take up its maximum number of shares another Member State can take them over.
34. Agreement Establishing the Black Sea Trade and Development Bank, Tbilisi 30 June 1994, Article 23.
35. The President Designate of the Bank is Mr Ersoy Volkan. He is Turkish national.
36. Agreement Establishing the Black Sea Trade and Development Bank, Article 22(1).
37. The Directors as well as the Governors are appointed by the Member States. Unlike the Governors, the Directors are paid by the Bank. The Board of Directors is responsible for the direction of the general operations of the Bank. It prepares the work of the Governors, takes decisions concerning the business of the Bank and its operation in conformity with the general directions given by the Board of Governors.
38. Agreement Establishing the Black Sea Trade and Development Bank, Article 31.
39. The other two projects which are financially supported by the European Union and which are directly geared to the BSEC as a cooperation initiative are the International Centre for Black Sea Studies to be located in Athens and the Black Sea Regional Energy Center in Sofia.
40. It seems that the European Commission is interested in establishing closer contacts with BSEC because at the end of 1996 it launched a study which aims at identifying the territorial impact of developments in the Black Sea Area region on the European Union and potential areas of common interest and mutual cooperation between the European Union and the BSEC states.
41. For example, see Speech by Iosif Micheloyianis, Member of Parliament, PASOK, at: PABSEC, Third Plenary Session, Draft Minutes of the Spring Session of the General Assembly, Bucharest, 20-22 June 1994, Doc. GA 558/94. Statement by Constantinos Stephanopoulos, President of the Hellenic Republic, at: High Level Meeting of the Participating States of the BSEC, Bucharest, 30 June 1995. ❑

Reconciling Liberalization and Public Service Obligations[1]

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1. Introduction

This article analyses the liberalization of telecommunications, postal services, energy (electricity and natural gas) and railways in the European Union. These are services which are regulated by the State for public interest reasons. The providers of these services are required to deliver them not only on purely commercial grounds, but also to comply with certain public service obligations.

For a long time regulated public services lay effectively outside the scope of European legislation, even though there was no explicit exemption in the EC Treaty. However, during the 1980s the new impetus provided by the completion of the Internal Market with freedom of movement for goods, services, persons and capital meant that the European Commission made proposals aiming at full or partial liberalization in the telecommunications, postal services, energy and rail transport sectors.

In a recent document entitled: *Services of general interest in Europe*,[2] the European Commission defined its approach towards the liberalization of regulated public services. The document states that services of general interest are at the heart of the European model of society. In this document, the Commission has tried to clear up any questions surrounding regulated public services and other services of general interest. In doing so it has chosen to clarify its terminology as follows:

- ***Services of general interest***: market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations;
- ***Services of general economic interest***: this is the term used in Article 90 of the EC Treaty and refers to market services which the MS subject to specific public service obligations by virtue of a general interest criterion, for example in the fields of transport networks, energy and communications;
- ***Public service***: this is an ambiguous term since it may refer either to the actual body providing the service or to the general interest role in view of which specific public service obligations may be imposed by public authorities on the body rendering the service (e.g. in matter of inland, air or rail transport and energy);
- ***Universal service***: this is an evolutionary concept, developed by the Community institutions, referring to a set of general interest requirements to be satisfied by telecommunications and postal service operators throughout the Community. The object of the resulting obligations is to make sure that everyone has access to certain high quality essential services at prices they can afford.

In the document, the Commission argues that the real challenge is to ensure smooth interplay between the requirements of the single European market and free competition on one hand and general interest objectives on the other.[3] In other words, the European Commission is of the opinion that a balance should be struck between liberalization and public service obligations.

2. Community law on regulated public services

The EC Treaty only contains a few references which relate directly to regulated public services. The only reference to the concept of public service[4] is to be found in Article 77 concerning a Common Transport Policy. It provides that state aid does not violate the Treaty if it meets the needs of transport coordination or if it represents reimbursement for the discharge of certain obligations inherent in the concept of a public service. This Article has however only played a marginal role in recent Community policy on the liberalization of regulated public services.

Article 222 states that it is of no consequence whether an enterprise is publicly or privately owned when it comes to applying Community law. Therefore, Community policies on the liberalization of regulated public services do not require the privatization of public enterprises, although many former public monopolies have been sold to the private sector, especially those in the field of telecommunications (e.g. British Telecom, the Dutch KPN, the Spanish Téléfonica).

Up till now, Article 90 of the EC Treaty has played the most important part in determining the role of regulated public services in the European Community. Its main significance is that undertakings responsible for operating services of general economic interest are subject to the rules on competition insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. Moreover, the development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

Article 90(3) explicitly confers power on the Commission to address relevant Directives or Decisions to Member States with a view to applying Article 90. However, in its liberalization policy the Commission has generally chosen to use Article 100a as a legal base. This Article provides legislation aiming to harmonize national legislation in the context of the establishment of the Internal Market. Legislation using Article 100a, which provides for the adoption of legislation according to the co-decision procedure (Article 189b), as a legal base involves a longer process as both the Council of Ministers and the European Parliament are heavily involved in it.

In recent years, Article 90 has generated an extensive debate on the relationship between Community law and regulated public services which are responsible for providing services of general economic interest. Different views are voiced in this debate. According to some, there

is too much focus on competition and not enough on services of general economic interest. The Commission has assumed the role of the guardian of both free competition and general interest, as it recently stressed in its document on general interest services. The interpretation of Article 90 of the EC Treaty by the Court of Justice has in some cases allowed a restriction on competition if necessary for the accomplishment of special tasks. Moreover, the adopted and proposed legislation in the field of regulated public services (for more details, see below) shows how both free competition and restrictions on competition can have a place if required for the accomplishment of special tasks. The balance between both aspects is subject to the principle of proportionality, implying that the restriction on competition should be no greater than is required to accomplish the special tasks.

3. Case-law: the Corbeau and Almelo cases

In most cases concerning the interpretation of Article 90, the Court has struck down obstacles to competition. However in a few cases, it allowed for general interest concerns to prevail over competition under certain conditions. Many see in the Corbeau-case[5] and the Almelo-case[6] an interpretation by the Court of Justice, which favours a more positive approach towards regulated public services. As an illustration of the interpretation both above mentioned cases are dealt with briefly below.

Corbeau

Mr. Paul Corbeau was prosecuted for infringing Belgian legislation on the postal monopoly. In Belgium the law conferred on the *Régie des Postes*,[7] a legal person under public law, the exclusive right to collect, carry and distribute all correspondence of whatever nature throughout the Kingdom, with infringements to the monopoly being subject to penalties. Within the city of Liège and the surrounding areas, Mr. Corbeau provided a service consisting of collecting mail from the sender's address and distributing it by noon the following day, provided that the addressee was located within the district concerned. Mr. Corbeau collected correspondence destined for addresses outside that district from the sender's address and sent it by post. In its judgement, the Court stated that the Régie des Postes is an undertaking responsible for operating services of general economic interest and that therefore a restriction on competition was justified in order to achieve an economic balance in which loss-making sectors are offset against profitable sectors. However, the Court also ruled that the exclusion of competition was not justified when dealing with specific services disassociated from the general interest which meet certain economic needs and which call for certain additional services not offered by the traditional postal service, such as collection from the senders' address, greater speed or reliability of distribution or the possibility of changing the destination in the course of transit, insofar as such services do not compromise the economic stability of the service of general economic interest carried out by the holder of the exclusive right.

Almelo

The Almelo-case concerns a dispute between the municipality of Almelo in the Eastern part of the Netherlands and the other local distributors of electric power on one side and *Energiebedrijf IJsselmij* (IJM), an undertaking engaged in the regional distribution of electric power, on the other. In the framework of the Dutch energy distribution system which comprises a local and a regional level, a Royal Order of 1918 granted the IJM a non-exclusive concession allowing it to distribute electricity within the territory covered by that concession. IJM supplies electricity to local distributors, in particular the municipality of Almelo. Between 1985 and 1988, local distributors were prohibited from importing electricity due to an exclusive purchasing clause obliging the municipalities to obtain electric power for supply in their territory exclusively from the IJM and to use that power only for their own consumption or for supply to third parties for consumption in the territory of the municipality. There was therefore a prohibition against imports of electric power, of which the electricity producers have the monopoly. The Court ruled that Article 85 of the Treaty (agreements between undertakings, decisions by associations of undertakings, concerted practices) prevents a regional electricity distributor from applying an exclusive purchasing clause prohibiting a local distributor from importing electricity for public supply purposes and affecting trade between Member States. It judged moreover that Article 86 (abuse of a dominant position) prevents an exclusive purchasing clause which affects trade between Member States where a regional electricity distributor belongs to a group of undertakings occupying a dominant position in a substantial part of the Common Market. However, the Court ruled that Article 90(2) of the Treaty was to be interpreted as meaning that the application by a regional electricity distributor of such an exclusive purchasing clause does not fall under the prohibitions contained in Articles 85 and 86 of the Treaty insofar as that restriction of competition is necessary in order to perform its general interest role. In this regard, the economic conditions under which the undertaking operates must be taken into account, in particular the costs which it has to bear and the legislation to which it is subject, particularly concerning the environment.

4. Sectoral approach of the European Commission

In its liberalization policy for regulated public services, the Commission has opted for an approach that considers regulated public services per sector, as each sector has its own technological and market characteristics. Nevertheless, there are some common elements in the legislation and proposals in all of the sectors concerned, for example public service obligations (either defined on the European level or chosen at the discretion of the Member States) comprise an important element in all sectors. There are provisions dealing with the separation of financial accounts between different functions within one organization (unbundling principle) for all sectors. Moreover, a distinction is made between operating and regulatory bodies in all sectors.

4.1 Telecommunications

The most successful Community policy on liberalization to date has been that regarding telecommunications services. Voice telephony infrastructures and markets are to be opened up by 1 January 1998 at the latest (in the year 2000 in Luxembourg and 2003 in Spain, Portugal, Greece and Ireland). For this purpose, regulatory bodies are to be kept separate from the operators and public networks will

be open to other operators.

Kovar distinguishes three steps in the Community's liberalization policy in the telecommunications sector.[8] The first deals purely with the liberalization of services which provide something in addition to the basic service, the so-called value-added services. The second step has extended liberalization towards voice telephony and the third step foresees the liberalization of infrastructures.

In 1987 the Commission set out its approach in a Green Paper[9] followed by the adoption of Directives 88/301/EEC[10] (providing for competition in the market of terminal equipment for telecommunications) and 90/388/EEC[11] (competition in the markets for telecommunications services) based on Article 90(3). The Council adopted Directive 90/387/CEE[12] on the establishment of the Internal Market for telecommunications services through the implementation of the Open Network Provision, which harmonized conditions of access to public networks. Directive 90/388/EEC was amended by the Commission Directive 96/2 with regard to mobile and personal communications.[13] Regarding the liberalization of voice telephony and telecommunications infrastructures, the Commission published a Green Paper in two parts[14] in which it outlined the legal framework for a fully competitive environment. The publication was followed by the adoption by the Commission of Directive 96/19/EC,[15] amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets. Further legislation has been adopted or is in the pipeline, for example Directive 95/62/EC[16] from the European Parliament and the Council which is a specific Directive establishing open network conditions for the voice telephony service. A common position has been adopted by the Council and the Parliament on a proposal for a Directive on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP).[17]

The public service obligations in telecommunications that accompany the opening up of markets and infrastructures are defined in terms of universal service. The historical antecedents of the term are to be found in the United States where the concept of universal service was linked to the monopoly of AT&T, but where, after a decision of divestiture by the judge, universal service was linked to the idea that competition is the best way to ensure everyone gets a minimum service of a certain quality on a permanent basis and at an affordable price.[18] Universal service requirements in telecommunications can be summed up as a defined minimum set of services of specified quality available to all users independent of their geographical location and, in the light of specific national conditions, at an affordable price.[19] This applies to the provision of a voice telephony service via a fixed connection which will allow a fax and a modem to operate, as well as to the provision of operator assistance, emergency and directory enquiry services and the provision of public payphones. In a recent proposal by the Commission adapting the Voice Telephony Directive to a competitive environment,[20] universal service is no longer equated with access solely via a fixed line, but is extended to a wireless connection.

The newly proposed Directive clearly shows that universal service is an evolutionary concept, which implies that its contents may change as a result of technological developments and the changing requirements of users/consumers. In view of this, the Commission will report on the scope, level, quality and affordability of universal service in the Community by 1 January 1998. Moreover, universal service is recognized as an essential element of the global information society,[21] in which the access of information is an essential part of citizenship.

The Community framework for financing the costs of universal service envisages payments being made (i) into an independent universal service fund at a national level which would make payments to operators providing universal service or (ii) directly to operators providing universal service as an additional payment to the commercial charges for interconnecting with their network. It is up to the National Regulatory Authority to decide whether or not to fund the net cost of universal service in a Member State. The Interconnection Directive provides that the net cost of universal service consists of the difference between the net cost for an organization of operating with universal service obligations and operating without universal service obligations. National schemes for financing universal service must be compatible with Community law and should be reported to the Commission. In a recent Communication, the Commission provided the assessment criteria for examining national legislation dealing with the implementation of national schemes for universal service as well as guidelines for National Regulatory Authorities for the operation of National Schemes.[22]

4.2 Postal services

The liberalization of postal services is much slower and more limited in scope than with telecommunications, not only because technological developments are less apparent than in the telecommunications sector, but also because Member States encounter many more difficulties when it comes to making agreements on liberalization. Universal service is the central concept behind the liberalization of postal services. The Commission initiated the liberalization of the postal sector in 1992 when it presented a Green Paper on the development of the Internal Market for postal services,[23] followed by a communication in June 1993 on the guidelines for the development of Community postal services.[24] In July 1995, the Commission proposed measures aiming to gradually open up the markets to competition in a controlled way by the year 2000.[25] The European Parliament adopted 58 amendments in its first reading of the co-decision procedure, which aimed at delaying the liberalization of the postal services market and which highlighted the quality of postal services as well as public service obligations. Subsequently the Commission presented an amended proposal[26] on which the Council of Ministers reached a common position in December 1996.

One has to distinguish between the universal service on the one hand and the area of services that may be reserved for the universal service provider on the other hand. The universal service provides a good-quality postal service for all users throughout their respective territory at affordable prices. Moreover, there will be guaranteed collection from the clearance points as well as door to door delivery every working day and not less than five days a week for every natural or legal person save in exceptional

circumstances. The universal service, which covers both national and cross-border services, will include the collection, transport and distribution of addressed mail items and addressed books, catalogues, newspapers and periodicals up to 2 kg and addressed postal packages up to 20 kg, as well as services for registered and insured items as part of its basic facilities.

One or more postal operators will be responsible for providing a universal service in each Member State and it is up to the Member State to decide which obligations and rights will be assigned to the universal service provider. The services reserved for the universal service provider to the extent necessary to ensure that the universal service is maintained are the collection, sorting, transport and delivery of items of domestic correspondence the price of which is less than five times the public tariff for an item of correspondence in the first weight band (generally <20 grams), provided that they weigh less than 350 grams. The distribution of incoming cross-border mail and direct mail (the same mail item sent to a significant number of addresses for advertising or marketing purposes) may continue to be reserved until the year 2001. That universal service in the postal sector is an evolutionary concept is made clear by the general reexamination of the scope of the reserved area of services to take place by the first half of the year 2000 at the latest. The Commission will report on this to the Council and the Parliament.

When the universal service obligations in postal services represent an unfair financial burden on the universal service provider, commercial provision of non-reserved postal items to the public may be authorized subject to an compulsory financial contribution to a compensation fund.

Finally, separate accounts are necessary for the different reserved and non-reserved services in order to introduce transparency in their actual costs and to ensure that cross-subsidies from the reserved sector to the unreserved sector will not affect competitive conditions in the latter.

4.3 Energy

In the field of Energy, the Commission has long been striving for common rules for the Internal Market for electricity and natural gas. Initial proposals, one concerning common rules for the Internal Market for electricity[27] and one concerning common rules for the Internal Market for natural gas,[28] have come across major difficulties. In 1992, the Council accepted the proposals but the European Parliament proposed some 300 amendments including the need for a clearer definition of public service obligations. In 1993, the Commission amended its proposals for the Internal Market for natural gas and electricity, which included references to public service obligations. On 20 December 1996, the Council finally adopted the Directive on common rules for the Internal Market for electricity which provides for a gradual opening up of the electricity market over six years, from 1999 onwards.[29]

4.3.1 Electricity

Following the calculation of the percentage of electricity in the Community consumed by users consuming more than 40 Gigawatt hours (GWh) per year, the electricity market will be opened up by 22% from 1999. After six years (by the year 2005), around 33% of the market will be opened up when the consumption threshold will have fallen to 9 GWh per year. Final consumers consuming more than 100 GWh per year must be included in the category of eligible consumers that have the right to choose their electricity supplier.

In opening up the market, Member States can opt either for "negotiated access" to the system or for a "single buyer". In the first case, producers supply undertakings and eligible customers will be able to negotiate access to the system so as to conclude supply contracts with each other on the basis of voluntary commercial agreements. In the second case, a Member State designates a legal person to be the "single buyer" who may be obliged to purchase electricity contracted by an eligible consumer from a producer inside or outside the territory at a price equal to the sale price offered by the single buyer to eligible consumers minus the price of a published non-discriminatory tariff for the use of the transmission and distribution system.

In compliance with Article 90, the Directive provides that Member States may impose public service obligations which may relate to security, including security of supply, quality and price of supplies and to environmental protection on undertakings operating in the general economic interest in the electricity sector. Member States may decide not to apply parts of the Directive if its application would obstruct the performance, in law or in fact, of the obligations imposed on electricity undertakings in the general economic interest and insofar as the development of trade would be contrary to the interests of the Community.

The unbundling principle requires integrated electricity undertakings to keep separate accounts for their generation, transmission and distribution activities with a view to avoiding discrimination, cross-subsidization and distortion of competition.

4.3.2 Natural gas

Regarding the Internal Market for natural gas, the Council has not yet adopted a common position on the amended proposal for Internal Market rules.[30] The proposed Directive allows natural gas undertakings to conclude supply contracts with consumers who are large industrial consumers (more than 25 million cubic meters of gas per year) and with distribution companies on the basis of commercial agreements. The unbundling principle is involved as separate accounts must be kept for the transmission, distribution and storage functions of integrated undertakings. Member States will be allowed to impose public service obligations on undertakings operating in the natural gas sector as regards the security, regularity, quality and price of supply. They will also be allowed to oblige distribution companies to supply customers located in a given area. The tariff for such supplies may be regulated, for example to ensure the customers concerned are treated equally.

4.4 Railways

When comparing railway services to other regulated public services, particularly telecommunications, it is generally recognized that market forces alone do not always guarantee the level, scope and quality of transport service required to fulfil essential economic, social and regional policy goals. This is particularly true in the case of urban and regional

public passenger service. As a general rule, the Member States have the right to obtain rail transport services in the public interest, as long as they compensate transport operators for the financial burden involved.[31]

In the framework of the development of the Community's railways, Council Directive 91/440/EEC[32] was adopted, providing for:

- independent management of railway undertakings;
- a split between railway operation and infrastructure and the provision of railway transport services; separation of accounts being compulsory and organizational or institutional separation being optional;
- the improvement of the financial structure of undertakings;
- access to networks of Member States for international groupings of railway undertakings and for railway undertakings engaged in the international combined transport of goods.

This Directive can be seen as a first step towards further liberalization. In 1995, the Commission proposed to modify Directive 91/440/EEC so as to extend access rights to railway infrastructure for all freight as well as for international passenger services.[33]

Further developments in the Community's railways were announced in a White Paper published in 1996.[34] In the White Paper, the Commission considers that the current organization is neither transparent nor efficient enough to ensure a high quality, efficient public service. It envisages that public service requirements in rail transport could be fulfilled by generalizing the use of public service contracts agreed by the State and the transport operator, replacing a system in which public service obligations are imposed on transport operators. In the process, market forces would be involved in the operation of services.

5. Modifying the Treaty?

Several interest organizations and Community institutions have proposed that more explicit references to regulated public services be introduced into the Treaty in order to strike more of a balance between competition on the one hand and public service obligations on the other. The major issue is whether it is necessary to modify the Treaty for this purpose.

5.1 European institutions

The European Parliament is very much in favour of introducing public service obligations in the Treaty. In its Resolution on the Intergovernmental Conference (IGC),[35] it stated that Community action is not only directed towards establishing a competition regime within the Internal Market, but that it is also there to serve the general interest and therefore has a role to play in strengthening economic and social cohesion and protecting consumers and service users. In the same Resolution, the EP stated that Article B of the Treaty on European Union and Articles 90(3) and 100a of the EC Treaty should be amended to include a reference to services of general economic interest. It also declared that the fundamental principles of public service, defined as accessibility, equality, continuity, quality, transparency and participation, should be written into the Treaty. The European Commission has proposed to include a reference to the promotion of services of general interest as one of the objectives of the Community in Article 3 of the EC Treaty. The Reflection group which had the task of preparing the agenda for the IGC has referred to regulated public services[36] by stating that a majority of the Group members is in favour of considering the reinforcement of the concept of public service utilities. However, others believe that the general interest would best be served by maintaining the existing provisions of the Treaty.

5.2 Interest groups

The most far reaching proposals have come from the interest organizations ISUPE[37] (*Initiative pour des Services d'Utilité publique en Europe*) and CEEP[38] (*Centre européen des Enterprises à Participation publique*). ISUPE has proposed that a new Article 84A be added to the Treaty. The most essential element of the ISUPE proposal is that the Treaty rules, notably on competition, do not apply to public service utilities, except when the Council and national law decide differently. The proposal aims at a fundamental change in the Treaty. According to the proposal, competition would become the exception instead of the rule for public utility services aimed at general economic interest. The CEEP has proposed to modify Article 90 by removing the paragraph on services of general economic interest and inserting a new Article 94A within a new Chapter 2 in Title V of the EC Treaty, concerning services of general economic interest.[39] Unlike the ISUPE-proposal, the CEEP-proposal does not represent a fundamental change as services of general economic interest will normally be subject to competition rules. However, Article 94A shows the attempt to define the obligations of enterprises responsible for general economic interest more clearly by referring to the equal treatment of consumers, continuity, adaptability, quality of service, transparency, effectiveness and opening of their management to consultation (proposed Article 94A(2)). Moreover, on the initiative of the former president of the European Commission Jacques Delors, the CEEP has drawn up a Draft European Charter of Services of General Economic Interest.[40]

5.3 Conclusion

The General Outline for a Draft Revision of the Treaties as presented by the Irish Presidency during the Dublin summit in December 1996[41] shows that no concrete progress has been made on the issue of public service utilities during the IGC. It states that proposals on the provision of services of general interest will have to be considered further by the Conference. If the Treaty is to be modified as regards public service utilities, the change will probably comprise a reference to the promotion of service of general interest added as a paragraph "u" to Article 3.

It is difficult to predict whether the Treaty will be modified because of the different traditions and histories of the public service utilities of the EU Member States which influence the actual positions adopted by the Member States. Countries with a very strong tradition of public service utilities which form part of the administrative law and are often constitutionalized tend to be those most in favour of introducing explicit references to public service utilities in the Treaty. The concept of public service utilities is most marked in France (*concept de service public*), and it is also important in Spain, Italy, Portugal,

Belgium and Greece. However, the concept of public service utilities like the French one is unknown in the other Member States. Some of the other Member States which do not have a strong public service tradition (e.g. the United Kingdom and the Netherlands) are not in favour of introducing references to public service utilities in the Treaty.

In the future, the liberalization of public services will most probably take place gradually and be balanced out by public service obligations which differ in character across the various public utilities sectors. This policy, which is already to be found in Article 90 of the Treaty and which has subsequently been pursued by the European Commission and the Court of Justice, will be maintained and any modification to the Treaty will probably not greatly change its direction. ❑

NOTES

1. This article will be part of a compilation of the proceedings of a colloquium on Managing Universal Service Obligations in Public Utilities in the European Union, held at EIPA, Maastricht, 28-29 November 1996. I am indebted to Alain Guggenbühl, Phedon Nicolaides and Robert Polet for their comments.
2. *European Commission, Services of general interest in Europe*, OPEEC, Brussels 1996, p. 6; as well as COM (96) 443 final, Brussels, 11.09.96.
3. Ibid, p. 9.
4. Article 48(4) of the EC Treaty also refers to public service, but in the meaning of public service as a body. The French translation of public service in this Treaty Article is *administration publique*.
5. Case C-320/91, "Criminal proceedings against Paul Corbeau", [1993] ECR I-2563.
6. Case C-393/92, "Municipality of Almelo versus Energiebedrijf IJsselmij NV", [1994] ECR I-1477.
7. *The Régie des Postes* was part of the Belgian public service which became an autonomous public enterprise in 1994.
8. R. Kovar, Droit communautaire et service public, esprit d'orthodoxie ou pensée laïcisée, *Revue trimestrielle de droit européen*, 1996, pp. 493-533.
9. COM (87) 290 final, *Towards a Dynamic European Economy, Green Paper on the development of the common market for telecommunications services and equipment*, Brussels 30.6.1987.
10. OJ L 131, p. 73, 27.5.88.
11. OJ L 192, p. 10, 24.7.90.
12. OJ L 192, p. 1, 24.7.90.
13. OJ L 20 p. 59, 26.1.96.
14. COM(94) 440 final, *Green Paper on the Liberalisation of Telecommunications Infrastructure and Cable Television Networks, Part I: Principles and Timetable*, Brussels, 25.10.1994 and COM(94) 682 final, *Green Paper on the Liberalisation of Telecommunications Infrastructure and Cable Television Networks, Part II: A Common Approach to the Provision of Infrastructure for Telecommunications in the European Union*.
15. OJ L 74, p. 13, 22.03.96.
16. OJ L 321, p. 16, 30.12.95.
17. OJ C 220, p. 13, 22.7.96, based on the Commission's proposal: COM (95) 379 final, *Interconnection in telecommunications with regard to ensuring universal service and interoperability through the application of the principles of Open Network Provision*, Brussels, 19.07.1995.
18. See Y. Poullet and F. Van der Mensbrugghe, "Service universel ou public dans la politique européenne des télécommunications", in: Loïc Grard, Jacques Vandamme et François van der Mensbrugghe (dir.), *Vers un service public européen*, ASPE Europe Editions, Paris 1996, pp. 333-413.
19. See Article 2 of the proposed Interconnection Directive.
20. COM (96) 419, *Proposal for a European Parliament and Council Directive on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment*, Brussels, 11.9.1996.
21. COM(96) 73 final, *Universal Service for Telecommunications in the Perspective of a Fully Liberalized Environment, An Essential Element of the Information Society*, Brussels, 13.03.1996.
22. COM (96) 608 final, *Assessment Criteria for National Schemes for the Costing and Financing of Universal Service in Telecommunications and Guidelines for the Member States on Operation of such Schemes*, Brussels, 27.11.1996.
23. COM (91) 476 final, *Green Paper on the Development of the Internal Market for Postal Services, Brussels*, 11 June 1992.
24. COM (93) 247 final, *Guidelines for the Development of Community Postal Services*, Brussels, 2 June 1993.
25. OJ C 322, p. 22, 2.12.95.
26. OJ C 300, p. 22, 10.10.96.
27. OJ C 65, p. 4, 14.3.1992.
28. OJ C 65, p. 14, 14.3.1992.
29. Directive 96/92/EC, OJ L 27, p. 20, 30.1.97.
30. Amended proposal for a European Parliament and Council Directive concerning common rules for the Internal Market for natural gas, OJ C 123, p. 26, 4.5.1994.
31. Council Regulation 1191/69/EEC, OJ L 156, p. 1, 28.6.69, amended by Council Regulation 1893/91/EEC, OJ L 169, p. 1, 29.6.91.
32. OJ L 237, p. 25, 24.8.91.
33. OJ C 321, p. 10, 1.12.95.
34. COM (96) 421 final, White Paper, *A strategy for Revitalizing the Community's Railways*, Brussels, 30.07.1996.
35. Resolution A4-0068/96, OJ C 96, p. 77, 1996.
36. The report of the Reflection Group uses the term public service utilities: 1996 Intergovernmental Conference, *Reflection Group Report and Other References for Documentary Purposes*, General Secretariat of the Council of the European Union, Brussels, December 1995, p. 48.
37. ISUPE is an association that regroups representatives from mainly French but also German, Belgian, Spanish and Portuguese public service undertakings which provides feedback on the role and place of regulated public services in the European Union.
38. CEEP is recognized as a social partner in the framework of European social dialogue and is the European interest group for many regulated public services enterprises in Europe.
39. CEEP, *Europe, concurrence et service public*, Masson, Paris, 1995.
40. Ibid.
41. Conference of the Representatives of the Governments of the Member States, *The European Union Today and Tomorrow, Adapting the European Union for the Benefit of its Peoples and Preparing it for the Future*, A General Outline for a Draft Revision of the Treaties, Conf 2500/96, Brussels, 5 December 1996. ❑

Important Judgements Delivered by the Court of Justice of the European Communities During the Period 1 October 1996 – 1 March 1997

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I

Questions concerning the scope of the Francovich judgement continue to come before the Court, and the principle of **state liability** for breach of Community law was again discussed in *Joined Cases C-178/94, C-188/94, C-189/94 and C-190/94 Erich Dillenkofer and Others*, 8 October, 1996. In this case the Court considered that Germany was financially liable for failure to implement the Directive on package travel within the prescribed period. In its judgement, the Court repeated its previous ruling to the effect that where a Member State fails to take the measures necessary to implement a Directive within the specified time limits, that Member State has manifestly and gravely disregarded the limits of its discretion in the exercise of its rule-making powers. Such a breach gives rise to a right to reparation on the part of individuals if the result prescribed by the Directive entails the grant of rights to them, the content of those rights is identifiable on the basis of the provisions of the directive and a causal link exists between the breach of the State's obligation and the loss and damage suffered by the injured parties. It is not necessary to take any other conditions into consideration. As a result, two consumers were entitled to bring compensation actions against Germany for losses arising out of the insolvency of two operators from whom they had purchased a package holiday.

II

With respect to the **free movement of goods**, *case C-313/94 Fratelli Graffione SNC v. Ditta Fransa,* 26 of November 1996, concerned the interpretation of Articles 30 and 36 of the EC Treaty and Article 12(2)(b) of the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks. The Scott multinational group of companies had been prohibited from selling various products in Italy under the Cotonelle trade mark on the grounds that it might mislead consumers into thinking that the products in question actually contained cotton. However the Scott group continued to use the trade mark in France and Spain. Fransa, who owned a supermarket in Italy, continued to sell products under the Cotonelle trade mark and Graffione brought an action against them on the basis that Fransa was infringing rules on unfair competition. Graffione claimed that as a wholesaler he was placed at a competitive disadvantage as he was prevented from obtaining products bearing the Cotonelle trade mark directly from Scott in Italy, while Fransa continued to import them from other Member States where the trade mark is still valid. In its judgement the Court considered that an injunction prohibiting the marketing of the products did constitute an obstacle to Community trade and if the marketing of the products under the trade mark was generally prohibited, then this constituted a barrier to the free movement of goods and it was necessary to establish whether it was justified in the interests of consumer protection. In this respect, the Court considered that the possibility of allowing a prohibition of marketing on account of the misleading nature of a trade mark is not, in principle, precluded by the fact that the same trade mark is not considered misleading in other Member States. Linguistic, cultural and social differences between the Member States may give rise to a situation in which a trade mark is liable to mislead consumers in one Member State but not in another. The Court considered that the Trade Mark Directive was not relevant to the principal issue in the case as Article 12(2) of that Directive leaves it to national law to determine whether and to what extent the use of a revoked trade mark may be prohibited.

The full Court delivered another judgement concerning the issue of patent protection under Community law in *Joined Cases C-267/95 and C-268/95, Merckx & Co v. Primecrown and Beecham Group plc v. Europharm Ltd*, of 5 December last. This case concerned the extent to which a patent holder may oppose parallel imports of a drug in cases where those imports come from a Member State where their products are marketed but are not patentable. One of the questions put to the Court concerned the scope of the rule in *Case 187/80 Merckx v. Stephar and Exler* 1981 ECR 2063, in which the Court held that an owner of a patent protected by the legislation of a Member State may not rely on that legislation to oppose the importation of a product which has been lawfully put on the market in another Member State by the owner of the patent, even where the product was not patentable in the Member State concerned. Merckx and Beecham argued that this principle should be either over-ruled or restricted in the light of new circumstances. However the Court considered that the ruling in *Merckx v. Stephar and Exler* was still valid. While the Court admitted that certain circumstances had changed, it was nevertheless of the opinion that if a patentee could prohibit the importation of protected products marketed in another Member State by him or with his consent, he would be able to partition national

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markets and thereby restrict trade between the Member States. The Court pointed out that if a patentee decides to put a product on the market in a Member State where it is not patentable, he must accept the consequences of his choice as regards the possibility of parallel imports. It seems that the Court was partially influenced by the fact that the situation addressed in the *Merckx* case is set to disappear as pharmaceutical products are now patentable in all the Member States.

Another question addressed in the case concerned how far the *Merckx* case applies where patentees are legally obliged to market their products in the exporting State. The Court pointed out that in such a case, the patentee cannot be deemed to have consented to the marketing of the products concerned and is therefore entitled to oppose the importation and exportation of those products in the State where they are protected. However there must be a genuine existing obligation to market the product concerned in the exporting State. On the other hand, the Court ruled that *Merckx* does apply to situations where ethical obligations compel patentees to provide supplies of drugs even where they are not patentable. The Court considered that such considerations are not such as to make it possible to properly identify the situation in which the patentee is deprived of his power to decide freely how he will market his product.

Another interesting case concerning the free circulation of medicinal products occurred in *Case C-201/94, The Queen v. The Medicines Control Agency, ex parte Smith & Nephew Pharmaceuticals Ltd and between Primecrown Ltd and The Medicines Control Agency* which was decided on the 12 of November 1996. This case concerned the interpretation of Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products and of the obligations associated with the authorisation of proprietary medicinal products. However, it is not intended to discuss this case in the context of the present article.

III

One of the most controversial cases which has come before the Court in this period concerned EC **Labour Law.** In *Case C-84/94 United Kingdom v. Council,* 12 November, 1996, which concerned the so-called Working Time Directive (OJ 1993 L 307, P. 18), the UK brought a 173 action against the Council seeking annulment of the Directive on the basis that it was adopted on the incorrect legal basis. The Directive was adopted on the basis of Article 118a, and the UK claimed that it should have been adopted on the basis of Article 100 of the EC Treaty or Article 235. After a detailed analysis of the working of Article 118a and of the objectives of the Directive, the Court concluded that it had been adopted on the correct legal basis. Moreover, the Court expressly stated that neither Article 100 nor Article 100a could have constituted an appropriate legal basis. However, the most interesting aspect of the case was not the judgement itself but rather the reaction of the UK government. Following the announcement of the ruling, John Major indicated that London would ask for the legislation to be modified in the framework of the IGC. The British Prime Minister also indicated that the UK would block any agreement on the reform of the EU if the changes to the Treaties called for by London were not accepted.

IV

Two rulings of interest were handed down in the area of **social security law.** In *Joined Cases C-245/94 and C-312/94 Hoever and Zachow v. Land Nordrhein-Westfalen*, 10 October, 1996, the Court was asked whether a child-raising allowance can be treated as a family benefit within the meaning of Article 4(1)(h) of Regulation No. 1408/71. In response to this question, the Court reiterated previous case-law to the effect that a benefit is to be regarded as a social security benefit if it is granted to recipients without any individual and discretionary assessment of personal needs on the basis of a legally defined position and if it concerns one of the risks expressly listed in Article 4 (1) of Regulation No 1408/71. The child-raising allowance in question therefore fell within the Regulation as it constituted a legally defined right and was granted automatically to persons fulfilling certain objective criteria, without any individual and discretionary assessment of personal needs.

Another question put to the Court concerned the rationae personae of the Regulation. Neither Mrs. Hoever nor Mrs Zachow were covered by the Regulation themselves, however both their husbands were. It was therefore argued that they could not rely on the Directive by virtue of the judgement in *Case 40/76 Kermaschek* 1976 ECR 1669, where the Court ruled that members of a worker's family can only claim derived rights under the Regulation. In response to this claim, the Court pointed out that the scope of the rule in *Kermaschek* was limited in *Case C-308/93 Cabanis-Issarte*, 30 April 1996, where the Court held that the former case was limited to cases in which a member of a worker's family relies on provisions of Regulation 1408/71 which are applicable solely to workers and not to members of their families. The Court considered that this was not the case with Article 73 of the Regulation, the precise purpose of which is to guarantee members of the family residing in a Member State other than the competent State the grant of the family benefits provided by the applicable legislation. The Court concluded that the distinction between personal rights and derived rights does not in principle apply to family benefits.

V

The second case concerned Directive 79/7 and the issue of equal treatment for men and women in matters of social security. In case *C-77/95 Bruna-Alessandra Züchner* 7 November, 1996, the Court was presented with an ingenious argument aimed at extending the

personal scope of application of the Directive. The case concerned the wife of a paraplegic who provided him with both therapeutic treatment and general care and home nursing. She claimed that she should be considered as a member of the working population since she provided care for which she had to undergo training and which, by virtue of its nature and scope, could be assimilated to an occupational activity. If she did not provide such care, it would have to be provided by someone else against payment, or in a hospital. The Court however refused to accept this interpretation. In the first place, it pointed out that the term 'activity' included in Article 2 of the Directive can only be construed as referring to an activity undertaken in return for remuneration. In addition, it was of the opinion that to adopt the proposed interpretation would have the effect of infinitely extending the scope of the Directive. In this respect the Court pointed out that the education of children, housework, and the management of private property are all activities which require a degree of competence and must be provided by an outside agency in return for remuneration if there is no one else who will do so without payment.

VI

In the area of **environmental law,** the Court was asked to interpret the scope of application of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment (Environmental Impact Assessment Directive). Thus in *Case C-72/95, Aannemerbedrijf P.K Kraaijeveld BV v. Gedeputeerde Staten an Zuid-Holland* 24 October, 1996, the Court was asked whether the expression 'canalisation and flood relief works' covers certain types of work on a dyke running alongside a waterway. The Court considered that such work was covered by the Directive despite the divergences existing in the different language versions. In this respect the Court considered that in situations where there are differences between the various versions of a Directive, it is necessary to interpret the Directive in accordance with the purpose and context of the rules of which it forms part. The Court pointed out that it was clear from Art 3 that the Directive was intended to have a wide scope and a broad purpose and consequently the Court concluded that dyke works were covered.

Various other cases in the area of environmental law concerned actions against Member States for failure to implement various environmental directives within the prescribed periods.

VII

In *Case C-73/95, Viho Europe v. Commission*, 24 October, 1996 the Court upheld a ruling of the Court of First Instance concerning the application of Article 85 (1) to conduct which occurred within a group of companies. The Court considered the company concerned (Parker) and its subsidiaries formed a single economic unit and that the subsidiaries did not enjoy any real autonomy in determining their course of action in the market but merely carried out the instructions issued by the parent company controlling them. The fact that Parker's distribution policy, according to which its subsidiaries were required to restrict the distribution of Parker products to their allocated territories, had the effect of dividing the various national markets and was capable of producing effects outside the Parker group, was not sufficient to make Article 85 (1) applicable.

VIII

Case *C-311/94 Ijssel – Vliet Combinatie BV v. Minister van Economische Zaken,* 15 October, 1996, concerned the field of **state aid law.** The case arose because the Ministry for Economic Affairs refused an application for a subsidy for the construction of a fishing vessel. This refusal was challenged in the national courts, and a reference was made to the Court of Justice. The first question sought to establish whether the Commission, when exercising its powers under Arts 92 and 93 of the Treaty, can adopt guidelines requiring compliance, not only with the competition rules but also with those relating to the common fisheries policy, even when the Council has not expressly authorised it to do so. The Court considered that not only was the Commission entitled to take account of considerations relating to the common fisheries policy when assessing whether aid in the fisheries sector is compatible with the common market, it was essential for it to do so. In response to the second question posed by the national court, the Court of Justice went on to say that the guidelines issued by the Commission must be taken into consideration by the Member States when deciding on an application for aid for the construction of a vessel intended for fishing and that the Guidelines are binding on the Member States.

IX

The Court was called upon to interpret the Second Council Directive (77/91/EEC) *in Case C-42/95 Siemens AG v. Henry Nold*, 19 November, 1996. Essentially the national court wished to know whether the Second Directive, and in particular Article 29 (1) and (4), precludes a Member State's domestic law from granting a right of pre-emption to shareholders in the event of an increase in capital by consideration in kind and from subjecting the legality of a decision withdrawing the right of pre-emption to a substantive review. Article 29 (1) of the Directive provides that whenever capital is increased by consideration in cash, the shares must be offered on a pre-emptive basis to shareholders in proportion to the capital represented by their shares. Article 29 (4) authorises the general meeting in certain circumstances to decide to restrict or withdraw that right. In its judgement, the Court of Justice, first emphasised that the Second Directive seeks to set out a minimum equivalent protection for both shareholders and creditors of public limited liability companies. The Court then pointed out that the fact that the provision only applies to cases in which the capital is increased by

consideration in cash does not mean that the Community legislator elected to restrict the shareholders right of pre-emption to such cases, thereby precluding Member States from extending it also to increases in capital by consideration in kind. On the contrary, the fact that the Second Directive does not deal with this situation means the Member States remain at liberty to provide or not to provide for a right of pre-emption in such a case.

X

In *cases C-317/94, Elida Gibbs v. Commissioners of Customs and Excise and Case C-288/94 Argos Distributors v. Commissioners of Customs and Excise*, which were both decided on the 24 October 1996, the Court confirmed the principle that **value added tax** may only be charged on the actual payment made by the consumer. The use of different voucher schemes such as money-off and cash back vouchers means that only the value of the goods or services actually received are taxable. The Court considered that the fiscal consideration is a 'subjective' value (the money actually received in each case) and not a value estimated according to objective criteria.

Other interesting cases include: Joined Cases C-283/94, C-291/94 and C-292/*94 Denkavit International BV, VITIC Amsterdam BV and Voormeer BV v. Bundesamt für Finanzen* of the 17 October 1996, which concerned the interpretation of Articles 3 and 5 of Council Directive 90/435 of 23 July 1990 on the **common system of taxation** applicable in the case of parent companies and subsidiaries of different Member States.

XI

The **Brussels convention** was interpreted in *Case C-383/95 Rutten v Cross Medical Ltd* which was decided on 9 January last. Article 5(1) of the Convention provides that in matters relating to a contract, a person domiciled in one Contracting State may be sued in another Contracting State. Employers may be sued in the place where the employee habitually carries out his work or, if the employee does not habitually carry out his work in any one country, the employer may also be sued in the courts for the place where the business which engaged the employee was or is situated. In relation to this Article, the Court ruled that where an employee carries out his work in several Contracting States, the place where he habitually carries out his work is the place where he has established the effective centre of his working activities.

In *Case C-78/95 Bernardus Hendrikman and Maria Feyen v. Magenta Druck & Verlag GmbH* which was decided on the 10 October 1996, the Court of Justice was asked to consider Article 27 (2) of the Brussels Convention. This Article provides that a judgement will not be recognised where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence. The Court was asked whether this Article applies in a case where the defendants were represented by a lawyer, but the lawyer concerned was not authorised by the defendants to appear on their behalf. The Court held that in such a case the defendant must be regarded as a defendant in default of appearance within the meaning of Article 27 (2) of the Convention.

XII

The Court has been called upon to interpret the **principle of legitimate expectation** in a number of cases. This principle was again at issue in *Case T-336/94, Effisol v. Commission* which was decided on the 16 October, 1996. This case concerned a company which was issued an import quota for the chemical product CFC 11 but was subsequently refused an import licence. The company claimed damages from the Commission for breach of the principle of legitimate expectation. The Court of First Instance held, in accordance with previous case-law, that while an individual may rely on this principle in situations in which the Community institutions have led him to entertain justified expectations this is not the case 'if a prudent and discriminating trader could have foreseen the adoption of a Community measure likely to affect his interests. The company was consequently refused damages on the basis that the issuing of the import quota and the issuing of a licence were two independent stages and the company was not justified in assuming that because they had obtained a quota, they would also obtain a licence.

XIII

Case C-143795 P. Commission v. Socurte was decided on 9 January 1997. This case concerned the extent of notification which is required before the time limit for an **annulment action** starts to run. Although the Commission argued that it is sufficient for the two month period to start if the parties receive information from which the existence of a decision can be inferred, the Court of Justice upheld the Court of First Instance's ruling to the effect that notification necessarily involves the communication of a detailed account of the contents of the measure notified and of the reasons upon which it is based.

XIV

Finally it is of interest to note that on 9 December 1996, the Court of Justice issued a **Note for Guidance on References by National Courts for Preliminary Rulings**. In point 6 of this Note, the Court states that an order for reference should include: a statement of the facts which are essential to a full understanding of the legal significance of the main proceedings; an exposition of the national law which may be applicable; a statement of the reasons which prompted the reference; and, where appropriate, a summary of the arguments of the parties. ❑

Newsletter of the Regions in the European Union
Bulletin des Régions de l'Union européenne
Bulletin der Regionen der Europäischen Union

A Região Autónoma da Madeira

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Presidente do Governo da Região Autónoma da Madeira

La Région autonome de Madère

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Alberto João Cardoso Gonçalves Jardim
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A Região Autónoma da Madeira

Alberto João Cardoso Gonçalves Jardim
Presidente do Governo da Região Autónoma da Madeira

1. Traços gerais da identidade da região

A Região situa-se no Atlântico-Norte, entre os paralelos 30° e 33° de latitude Norte e os meridianos 15° e 17° de longitude Oeste. Fica, aproximadamente, a 800 km de distância da costa africana, a 980 km de Lisboa, para Nordeste, e 850 km do Arquipélago dos Açores, para Noreste.

É constituída pelas ilhas da Madeira (736,75 km^2) e do Porto Santo (42,17 km^2), esta a cerca de 20 milhas daquela, e por dois grupos de pequenas ilhas desabitadas: as Desertas (14,23 km^2) e as Selvagens (3,62 km^2). As ilhas Selvagens situam-se a 280 km a sul do Funchal e, portanto, já próximo das Canárias.

A Zona Económica Exclusiva da Região Autónoma da Madeira é de cerca de 400.000 km^2.

Todas as ilhas do Arquipélago da Madeira são de formação vulcânica e de costas abruptas.

A ilha da Madeira desenvolve-se na direcção ESE-WNW num comprimento máximo de 58 km e numa largura máxima de 23 km. O relevo estende-se na direcção do comprimento, atingindo no ponto mais alto 1 862 m de altitude. A costa é, no geral, constituída por abruptas falésias, dando origem a espectaculares abismos que caem a pique sobre o mar.

A ilha do Porto Santo é bastante menos acidentada e com maiores áreas planas.

Um dos grandes obstáculos ao desenvolvimento desta ilha e, principalmente, do seu aproveitamento agrícola, tem residido na permanente escassez de água.

Na ilha da Madeira, a área agrícola e a área social localizam-se principalmente abaixo dos 700 m de altitude. Acima dos 1 000 metros, o clima já não é favorável nem à fixação de famílias nem à agricultura; é, no entanto, aí que há infiltração de chuvas, as quais dão origem às nascentes que vão servir ao regadio das culturas (através de cerca de 200 "levadas", em mais de 1 000 km de extensão) e ao abastecimento de água à populações.

A encosta sul da ilha da Madeira, abrigada pelas montanhas dos ventos predominantes, que sopram de Norte, é mais quente, menos húmida e pluviosa que a encosta norte, sendo estes alguns dos factores que a tornaram mais propícia à ocupação humana, desde a sua colonização.

Organização Político – Administrativa

A Região Autónoma da Madeira é uma pessoa colectiva de direito público com poderes legislativos e executivos próprios, nos termos consagrados na Constituição da República Portuguesa e no Estatuto Político – Administrativo da Região Autónoma da Madeira (Lei n° 13/91, de 5 de Junho).

Os órgãos próprios de governo da Região são a Assembleia Regional e o Governo Regional. A nível de autarquias locais existem 11 concelhos e 53 freguesias.

A soberania da República é representada por um Ministro da República, cabendo aos respectivos órgãos o dever de cooperação com os órgãos regionais na prossecução de objectivos de desenvolvimento económico e social nestas regiões, visando em especial a correcção das desigualdades derivadas da insularidade.

2. Síntese das principais contribuições da sua região para a UE

A Região Autónoma da Madeira, à semelhança do que acontece com as restantes Regiões da Europa comunitária, tem contribuído para enriquecer a diversidade, a cultura e a história europeias.

Região situada na periferia da Europa, tem características exóticas e europeias, resultantes, em larga medida, das experiências recolhidas, ao longo dos tempos, nas suas relações com povos dos quatro cantos do mundo.

O clima temperado ao longo de todo ano, a beleza natural, as suas produções tropicais (banana, cana-de-açúcar, flores, frutos), artesanato (bordado Madeira), os hábitos, a cultura e história próprias são alguns elementos que a caracterizam como "Pérola do Atlântico".

Mundialmente conhecida pelo famoso "Madeira Wine", por várias vezes referenciado como forma de assinalar êxitos de acordos celebrados ao longo da história, e pela hospitalidade da sua população, este Arquipélago é por excelência um pólo turístico, aumentando a diversidade turística da União Europeia.

À semelhança das restantes Regiões Ultraperiféricas da Europa, a Região Autónoma da Madeira oferece condições para o desenvolvimento de certas actividades científicas (Observatório Astrofísico) e tecnológicas, em especial a investigação no âmbito da biologia marinha. A Madeira acolhe já a sede do Conselho Europeu do Direito do Ambiente.

3. A situação da regionalização no séu país

O direito constitucional português define o Estado como unitário, respeitando na sua organização os princípios da autonomia das autarquias locais e da descentralização democrática da administração pública.

Não obstante este princípio constitucional geral da unidade do Estado, a Constituição da República Portuguesa de 1976 institucionalizou duas regiões dotadas de estatutos político-administrativos e de órgãos de governo próprio – as regiões autónomas da Madeira e dos Açores.

A regionalização política dos arquipélagos da Madeira e dos Açores não é um princípio geral da organização do Estado e abrange apenas estes territórios insulares.

Assim, as Regiões Autónomas, enquanto entidades objecto de descentralização, são núcleos institucionalizados de decisão política especializada em função dos interesses regionais, com órgãos de governo próprio.

As regiões administrativas são definidas como

autarquias locais, podendo a lei estabelecer diferenciações quanto ao regime aplicável a cada uma. São dotadas de autonomia administrativa e financeira e de órgãos representativos que visam a prossecução dos interesses próprios das respectivas populações.

O que distingue o regime autonómico dos arquipélagos da Madeira e dos Açores do regime das autarquias locais, incluindo as regiões administrativas, é o facto daqueles possuírem autonomia "legislativa e governamental", com órgãos de governo próprio, apesar de limitada ao interesse específico de cada uma das Regiões e sujeita ao respeito pela Constituição e pelas Leis Gerais da República.

Embora as Regiões Autónomas não possuam Constituição própria, o seu regime está consagrado em Estatutos Político-Administrativos os quais enumeram as matérias de interesse específico.

Por conseguinte, o regime das Regiões Autónomas da Madeira e dos Açores, não deve ser confundido com o das regiões administrativas. Com efeito, as regiões administrativas poderão beneficiar de níveis elevados de autonomia administrativa, mas não disporão de autonomia política traduzida na sua participação no poder e na função legislativa.

Presentemente, discute-se em Portugal a instituição das regiões administrativas no território continental. Note-se que não haverá lugar à divisão dos territórios insulares em regiões administrativas dada a sua pequena dimensão territorial.

4. Nível de aplicação da subsidariedade em Portugal

A autonomia da Madeira e dos Açores visa a participação democrática dos cidadãos a fim de permitir uma eficiente resposta da administração às necessidades das populações insulares bem como o seu desenvolvimento económico-social.

Com este regime tem-se pretendido uma gestão regional dos recursos que aliada à solidariedade do Estado possibilite ultrapassar e dar resposta adequada aos limites impostos pela insularidade e afastamento destas Regiões.

O regime autonómico é um corolário da dimensão descentralizada da nossa Democracia. Constituiu um nível de poder mais próximo do cidadão e, portanto, mais adequado à realização efectiva da subsidiariedade, dado que veio permitir uma maior transparência das decisões bem como a proximidade dos cidadãos insulares no interior do Estado e da UE.

As Regiões podem legislar em matérias de interesse específico. Todavia, existem limites ao exercício desta competência (entendida como a possibilidade de actuação das Regiões) na medida em que estas só podem agir tendo em conta as finalidades de instituição do seu regime, ou seja, a promoção da participação democrática dos cidadãos, o desenvolvimento económico-social e a defesa dos interesses regionais, o reforço da unidade nacional e os laços de solidariedade entre todos os portugueses.

Simultaneamente à descentralização política a Constituição previu a cooperação dos órgãos de soberania e dos órgãos regionais, de modo a assegurar o desenvolvimento económico e social das regiões e, em especial, a correcção das desigualdades derivadas da insularidade.

Assim, a solidariedade nacional vincula o Estado a suportar os custos das desigualdades derivadas da insularidade, nomeadamente no que respeita a comunicações, transportes, educação, cultura, segurança social, saúde e energia, e incentivando a progressiva inserção da Região em espaços económicos mais amplos, de dimensão nacional ou internacional (Estatuto Político-Administrtativos da Região Autónoma da Madeira).

Além disso, a Constituição consagra os direitos de audição em matérias de interesse especifico e de participação das Regiões Autónomas em tratados e acordos interncionais que lhes digam respeito bem como nos benefícios deles decorrentes.

Neste contexto, a participação de Portugal nas Comunidades Europeias é uma das matérias de direito internacional respeitando directamente as Regiões Autónomas em relação às quais são obrigatoriamente ouvidos os órgãos de governo próprio, sendo-lhes atribuídos, face as especificades dos arquipélagos, todos os benefícios resultantes dos Fundos Comunitários.

5. Com base nos resultados obtidos até à data, quais são as expectativas das Regiões no âmbito da CIG 1996?

No âmbito da CIG/96, as Regiões pretendem o seu reconhecimento, de pleno direito, como Regiões Ultraperiféricas, beneficiando por isso do enquadramento mais adequado ao seu desenvolvimento económico e social à luz dos objectivos orientadores da política de coesão.

Neste contexto, França, Espanha e Portugal apresentaram à Conferência Intergovernamental 1996 propostas tendo em vista:

(1) o reforço do conceito de ultraperificidade definido na Declaração n° 26 do TUE;
(2) a manutenção do apoio prioritário acordado pela UE no quadro da coesão económica e social;
(3) a possibilidade de adaptação das políticas comunitárias às realidades regionais como forma de responder à necessidade de desenvolvimento.

Assim, as Regiões Ultraperiféricas esperam que os seus objectivos sejam alcançados através da inlcusão no Tratado de uma disposicão que, ao reconhecer o seu **Estatuto Específico**, permita às Instituições Comunitárias não só adoptarem medidas particulares a seu favor como também determinar condições especiais de aplicação do Tratado aos seus territórios.

6. Como reduzir os desequilíbrios regionais?

Para a redução dos desequilíbrios que persistem no espaço comunitário deverão ser tidos em conta a diversidade de problemas e potencialidades existentes e a respectiva dinâmica, de modo a poderem ser equacionadas adequadas opções estratégicas, quer a nível nacional, quer a nível comunitário, numa perspectiva de desenvolvimento global e sustentável e tendo em vista a coesão económica e social.

O desenvolvimento de uma região como a Madeira é muito prejudicado pelo seu carácter insular e pela situação ultraperiférica, o que cria graves problemas de acessibilidade nas suas relações com o exterior e dificulta a aproximação aos espaços mais desenvolvidos e centrais da Comunidade.

Os problemas devidos à descontinuidade territorial e à distância são agravados pela pequena dimensão do mercado, por dificuldades de aprovisionamento, pela orografia da Região de características adversas –

nomeadamente para a actividade agrícola e para a implantação de infraestruturas e redes de serviços essenciais ao desenvolvimento de actividades económicas e ao bem-estar das populações –, por desequilíbrios na estrutura urbana e pela grande sensibilidade do património natural.

Devido, em grande medida, a estes *handicaps* naturais, a estrutura económica é débil, sendo configurada segundo um modelo de especialização vulnerável, em que têm muito peso actividades tradicionais geradoras de fracos rendimentos e que apresentam dificuldades de integração num modelo económico competitivo.

O tecido empresarial é constituído predominantemente por muito pequenas empresas que dispõem de fraca capacidade de investimento, de superação de dificuldades estruturais e de organização do acesso ao mercado.

Existe ainda um insuficiente nível de formação dos recursos humanos e de desenvolvimento tecnológico.

O baixo nível de rendimento regional tem vindo a ser compensado, em parte, por transferências externas.

No quadro de uma economia cada vez mais mundializada e de intensificação da competição, a atenuação dos desequilíbrios em matéria de desenvolvimento económico e de capacidade produtiva deverá assentar num estratégia de desenvolvimento sustentável que permita:

- atenuar os problemas e estrangulamentos no domínio das acessibilidades, referidos anteriormente, nomeadamente através
  - * da criação/modernização de infraestruturas logísticas e de transportes marítimos e aéreos e de uma política reconhecida e eventualmente apoiada a nível comunitário que vise assegurar transportes regulares adequadamente articulados com as redes transeuropeias e mundiais, em condições de preços que não comprometam a competitividade inter-regional,
  - * da modernização das infraestruturas de transportes internos e da garantia de transportes regulares inter-ilhas, de modo a promover a integração dos mercado regionais e a atenuação dos desequilíbrios territoriais,
  - * do desenvolvimento das info-estruturas e da adopção de políticas activas que reforcem as possibilidades de acesso aos conhecimentos, com vista a evitar uma situação de desvantagem significativa relativamente às regiões centrais melhor equipadas;
- valorizar as capacidades regionais específicas, nomeadamente através do aproveitamento de potencialidades já reconhecidas, como sejam a consolidação da vocação turística, o desenvolvimento de uma agricultura mais diversificada e multifuncional, a preservação de valores culturais e paisagísticos, a conservação e valorização do património natural (que dispõe de valores de exclusividade mundial);
- valorizar e apoiar o artesanato, reforçando a sua importância pela inovação, pela qualidade e pela proximidade do mercado;
- desenvolver actividades que possam ser competitivas pela sua especificidade e pela fraca sensibilidade à distância resultante do alto valor incorporado;
- dinamizar actividades industriais e logísticas que explorem a sua posição no cruzamento das rotas atlânticas e desenvolver serviços internacionais no âmbito do Centro Internacional de Negócios da Madeira;
- prever a adopção de medidas específicas adaptadas às realidades regionais na aplicação de determinadas políticas sectoriais comunitárias (nomeadamente no domínio das políticas de transportes, agricultura, energia, ambiente e concorrência);
- valorizar o potencial humano, promovendo a melhoria do nível educacional e da qualificação da população activa;
- promover o desenvolvimento científico e tecnológico (através do reforço das instituições existentes e do intercâmbio com o exterior);
- criar condições de fixação dos recursos humanos, em particular os mais qualificados, nomeadamente através de uma adequada infraestrutura técnica e social;
- preservar o ambiente, apoiando um desenvolvimento sustentável e promover a melhoria das condições de vida.

7. Questão aberta

Nenhuma

8. Fotografia

Ver página 20.

9. Dados pessoais e políticos

Alberto João Cardoso Gonçalves Jardim, Presidente do Governo da Região Autónoma da Madeira, nasceu no Funchal em 1943 e é licenciado em Direito pela Universidade de Coimbra.

Como jornalista profissional foi director do Diário "Jornal da Madeira" da Diocese do Funchal, e colaborador ainda de outros semanários nacionais, regionais e dos países de emigração.

Professor nos ensinos técnico e secundário, dirigente cooperativo e de associações de solidariedade social, foi também director do Centro de Formação Profissional do Funchal. É assessor principal na carreira da Função Pública.

Cumpriu o Serviço Militar como Oficial de Acção Psicológica.

Eleito deputado à Assembleia da República e à Assembleia Legislativa Regional da Madeira, é Presidente do Governo Regional da Madeira desde Março de 1978. Nesta qualidade, membro do Conselho de Estado e do Conselho Superior de Defesa Nacional e do Conselho Superior de Segurança Interna.

Co-fundador na Madeira do Partido Social Democrata, vem presidindo às suas Comissões Políticas Regionais e é Vice-Presidente da Comissão Política Nacional do mesmo Partido.

É Presidente Honorário da Conferência das Regiões Periféricas da Comunidade Económica Europeia.

Foi representante de Portugal no extinto Conselho Consultivo da Política Regional e Local da Comunidade Europeia, agora substituído pelo Comité das Regiões, do qual é membro do respectivo Bureau.

É um dos representantes portugueses na Conferência dos Poderes Locais e Regionais do Conselho da Europa.

Grã-Cruz da Ordem do Infante, Comenda de Benemerência da Cruz Vermelha, e Grã-Cruz da Estrela Polar, da Suécia, para além de outras condecorações nacionais e estrangeiras. Sócio Honorário de várias instituições. ❑

La Région autonome de Madère

Alberto João Cardoso Gonçalves Jardim
Président du gouvernement de la Région autonome de Madère

1. Aperçu sommaire de l'identité de Madère

La Région autonome de Madère est située dans l'Atlantique Nord, à quelque 800 km de la côte africaine, à 980 km au Sud-Ouest de Lisbonne et à 850 km au Sud-Est de l'archipel des Açores.

La région est constituée par les îles de Madère (736,75 km2) et de Porto Santo (42,17 km2), à quelque 20 milles de Madère, et par deux groupes d'îlots inhabités: Desertas (14,23 km2) et Selvagens (3,62 km2). Les îles Selvagens sont situées à 280 km au sud de Funchal et donc près des îles Canaries.

Toutes les îles de l'archipel de Madère sont de formation volcanique et sont bordées de côtes abruptes. Le point culminant de l'île de Madère s'élève à 1.862 m d'altitude. La côte est en général dessinée par des falaises abruptes, ce qui donne lieu à des abîmes spectaculaires qui tombent à pic sur la mer.

L'île de Porto Santo est moins accidentée et possède plus de zones planes. Un des grands obstacles au développement de cette île est principalement, du point de vue agricole, une pénurie permanente d'eau.

Organisation politique et administrative

La région autonome de Madère est une personne morale de droit public dotée de pouvoirs législatifs et exécutifs propres, en des termes consacrés dans la Constitution de la République portugaise et dans le Statut politique et administratif de la Région autonome de Madère (Loi n° 13/91 du 5 juin).

Les organes de gouvernement de la région sont l'assemblée législative régionale et le gouvernement régional. Au niveau des collectivités locales, il y a 11 *concelhos* (subdivisions du district) et 53 *freguesias* (littéralement paroisses, subdivisions du *concelho* dont le nombre d'électeurs ne peut être inférieur à 800. La loi prévoit d'autres conditions pour la création de *freguesias*).

La souveraineté de la République est représentée par un ministre de la République, qui au sein des organes compétents, a le devoir de coopération avec les organes régionaux dans la poursuite des objectifs de développement économique et social dans ces régions, visant en particulier à corriger les inégalités résultant de l'insularité.

2. Résumé des principaux apports de la Région de Madère à l'Union européenne

La Région de Madère, tout comme les autres régions de l'Europe communautaire, contribue à l'enrichissement de la diversité, de la culture et de l'histoire de l'Europe.

Située dans la périphérie de l'Europe, la région de Madère présente des caractéristiques à la fois exotiques et européennes, qui sont dans une large mesure le fruit d'expériences faites au cours du temps dans ses relations avec des peuples venant des quatre coins du monde.

Un climat tempéré tout au long de l'année, sa beauté naturelle et ses produits tropicaux (bananes, canne à sucre, fleurs, fruits), son artisanat (broderies de Madère), ses us et coutumes, sa culture et son histoire, tels sont quelques-uns des éléments qui font de Madère la "perle de l'Atlantique".

Connu dans le monde entier pour le célèbre vin de Madère, cet archipel est par excellence un pôle touristique qui vient s'ajouter à la diversité touristique de l'Union européenne.

A l'instar d'autres régions ultrapériphériques de l'Europe, la Région autonome de Madère offre les conditions requises pour le développement de certaines activités scientifiques (observatoire d'astrophysique) et technologiques, en particulier la recherche dans le cadre de la biologie marine. Madère accueille déjà le siège du Conseil européen du droit de l'environnement.

3. Situation de la régionalisation au Portugal

Le droit constitutionnel portugais définit l'Etat comme étant un Etat unitaire, qui respecte, dans son organisation, les principes de l'autonomie des collectivités locales et de la décentralisation démocratique de l'Administration publique.

Malgré ce principe constitutionnel général d'unité de l'Etat, la Constitution de la République portugaise de 1976 institutionnalise deux régions dotées d'un régime politique et administratif et d'organes de gouvernement qui leur sont propres; ce sont les régions de Madère et des Açores.

Cependant, la régionalisation politique des archipels de Madère et des Açores n'est pas un principe général d'organisation de l'Etat et se limite uniquement à ces territoires insulaires.

Ainsi, les régions autonomes, en tant qu'entités objet de décentralisation, sont des noyaux institutionnalisés de décision politique spécialisée en fonction des intérêts régionaux et dotés d'organes de souveraineté.

Les régions administratives sont définies comme des collectivités locales créées par la loi. Celle-ci peut différencier le régime applicable à chacune d'elles. Elles sont dotées d'une autonomie administrative et financière et d'organes représentatifs qui visent à la poursuite des intérêts propres de leurs populations respectives.

Ce qui distingue le régime d'autonomie des archipels de Madère et des Açores du régime des collectivités locales, y compris les régions administratives, c'est le fait qu'elles possèdent une autonomie "législative et gouvernementale", avec des organes de gouvernement qui leur sont propres, mais cette autonomie est limitée aux intérêts spécifiques de chaque région et sujette au respect de la Constitution et des Lois générales de la République.

Bien que les régions autonomes ne possèdent pas de

Constitution propre, leur régime est consacré dans le statut politique et administratif qui énumère les matières qui les intéressent spécifiquement.

Par conséquent, le régime des Régions autonomes de Madère et des Açores, ne doit pas être confondu avec celui des régions administratives. En effet, les régions administratives peuvent bénéficier de niveaux élevés d'autonomie administrative, mais ne jouissent pas d'une autonomie politique qui se traduirait par leur participation au pouvoir et à la fonction législative.

Une discussion est actuellement en cours au Portugal au sujet de l'institution de régions administratives sur le territoire continental. Il est à remarquer qu'il n'y aura pas de division des territoires insulaires en régions administratives étant donné leur dimension territoriale restreinte.

4. Niveau d'application du principe de subsidiarité dans votre pays

L'autonomie de Madère et des Açores vise à la participation des citoyens à la vie démocratique afin de permettre une réponse efficace de l'administration aux besoins des populations insulaires et d'assurer leur développement économique et social.

Avec ce régime on vise à une gestion régionale des ressources qui, alliée à la solidarité de l'Etat, permette de dépasser les limites imposées par l'insularité et le grand éloignement de ces régions et d'y apporter une réponse adéquate.

Le régime d'autonomie est un corollaire de dimension décentralisée de notre démocratie. Il constitue un niveau de pouvoir plus proche de chaque citoyen et, partant, mieux indiqué pour la réalisation effective de la subsidiarité, étant donné qu'il offre une plus grande transparence des décisions ainsi qu'une proximité des citoyens insulaires à l'intérieur de l'Etat et de l'Union européenne.

Les régions peuvent légiférer sur des matières les intéressant spécifiquement. Toutefois, il y a des limites à cette compétence (entendue comme la possibilité d'action des régions), dans la mesure où les régions peuvent seulement agir en tenant compte des finalités de l'institution de leur régime ou de la promotion de la participation des citoyens à la vie démocratique, du développement économique et social et du respect et de la défense des intérêts régionaux, ainsi que du renforcement de l'unité nationale et des liens de solidarité entre tous les Portugais.

Simultanément à la décentralisation politique, la Constitution prévoit la coopération des organes de souveraineté avec les organes de gouvernement régional, de façon à assurer le développement économique et social des régions, en s'efforçant notamment de corriger les inégalités résultant de leur insularité.

Donc, la solidarité nationale oblige l'Etat à supporter les coûts des inégalités résultant de leur insularité, notamment en matière de communications, transports, éducation, culture, sécurité sociale, santé et énergie, et à encourager l'insertion progressive de la région dans des espaces économiques plus vastes, de dimension nationale ou internationale (Statut politique et administratif de la Région autonome de Madère).

Par ailleurs, la Constitution consacre le droit d'audition dans les matières qui présentent un intérêt spécifique pour les régions et le droit de participation des régions autonomes aux négociations des traités et accords internationaux qui les concernent directement, ainsi que le droit de prendre part aux avantages qui en découlent.

Dans ce contexte, la participation du Portugal aux Communautés européennes est une des matières de droit international touchant directement les régions autonomes et pour lesquelles il faut obligatoirement entendre les organes de gouvernement régional, et auxquelles on attribue, face aux spécificités des archipels, les bénéfices résultant des fonds communautaires.

5. Sur la base des résultats obtenus jusqu'ici, quelles sont les attentes que les régions peuvent mettre dans la CIG de 1996?

Dans le cadre de la CIG de 1996, les régions souhaitent être reconnues, de plein droit, comme régions ultrapériphériques et, partant, bénéficier d'un encadrement mieux adapté à leur développement économique et social à la lumière des objectifs qui orientent la politique de cohésion.

Dans ce contexte, la France, l'Espagne et le Portugal présenteront à la Conférence intergouvernementale de 1996 des propositions en vue de:

(1) renforcer le concept de région ultrapériphérique défini dans la déclaration n°26 du TUE;
(2) maintenir l'appui prioritaire accordé par l'UE dans le cadre de la cohésion économique et sociale;
(3) pouvoir adapter les politiques communautaires aux réalités régionales afin de répondre aux besoins de développement.

Ainsi, les régions ultrapériphériques espèrent que ces objectifs seront atteints à travers l'inclusion dans le Traité d'une disposition qui, en plus de reconnaître leur statut spécifique, permette aux institutions communautaires non seulement d'adopter des mesures particulières en leur faveur, mais aussi de déterminer des conditions spéciales d'application du Traité sur leurs territoires.

6. Comment arriver à réduire les déséquilibres régionaux?

Pour réduire les déséquilibres régionaux qui persistent dans l'espace communautaire, il faudra tenir compte de la diversité des problèmes et des potentialités existants et de leur dynamique respective afin de pouvoir prendre des options stratégiques adéquates, tant au niveau national qu'au niveau communautaire, dans la perspective du développement global et durable et en ne perdant pas de vue la cohésion économique et sociale.

Le développement d'une région comme Madère est très affecté par son caractère insulaire et sa situation ultrapériphérique, ce qui crée de graves problèmes d'accessibilité dans ses relations avec l'extérieur et rend difficile le rapprochement de zones plus développées et plus centrales de la Communauté.

Les problèmes dus à la discontinuité territoriale et à la distance sont encore accentués par la petite dimension du marché, par des difficultés d'approvisionnement liées à l'orographie particulière de la région aux caractéristiques négatives – notamment pour l'activité agricole et pour l'implantation d'infrastructures et réseaux de services essentiels au développement d'activités économiques et au bien-être de la population –, par des déséquilibres dans la structure urbaine et par la grande sensibilité du patrimoine

naturel.

En grande partie à cause de ces handicaps naturels, on peut dire que la structure économique est faible; les activités traditionnelles génératrices de maigres revenus et qui représentent des difficultés d'intégration dans un modèle économique compétitif occupent une place importante dans cette structure.

Le secteur des entreprises est constitué essentiellement de nombreuses petites entreprises qui disposent de faibles capacités d'investissement ou de capacités insuffisantes pour surmonter les difficultés structurelles et d'organisation pour l'accès au marché.

Le niveau de formation des ressources humaines et de développement technologique est aussi insuffisant.

Le faible niveau de rendement régional doit être compensé en partie par des transferts externes.

Dans le cadre d'une économie toujours plus mondialisée et d'une intensification de la concurrence, l'atténuation des déséquilibres en matière de développement économique et de capacité de production devra s'inscrire dans une stratégie de développement durable qui permettra de:

- réduire les problèmes et les goulets d'étranglement en matière d'accessibilité dont il a été question précédemment, et cela notamment à travers:
  * la création/modernisation d'infrastructures logistiques et de transports maritimes et aériens et d'une politique reconnue et éventuellement soutenue au niveau communautaire qui vise à assurer des transports réguliers et articulés de façon congrue avec des réseaux transeuropéens et mondiaux, à des conditions tarifaires qui ne compromettent pas la compétitivité interrégionale.
  * la modernisation d'infrastructures de transports internes et la garantie de transports réguliers entre les îles, de façon à promouvoir l'intégration des marchés régionaux et à atténuer les déséquilibres territoriaux;
  * le développement d'infrastructures en matière d'information et l'adoption de politiques actives qui renforcent les possibilités d'accès aux connaissances, en vue d'éviter une situation de désavantage significatif par rapport aux régions centrales mieux équipées;
- valoriser les capacités régionales spécifiques, notamment à travers l'exploitation des potentialités déjà reconnues, ainsi que par la consolidation de la vocation touristique, le développement d'une agriculture plus diversifiée et multifonctionnelle, la préservation des valeurs culturelles et naturelles, la conservation et la valorisation du patrimoine naturel (qui possède des valeurs d'exclusivité mondiale);
- valoriser et soutenir l'artisanat, tout en renforçant son importance pour l'innovation, la qualité et la proximité du marché;
- réaliser des activités qui puissent être compétitives en raison de leur spécificité et de la faible sensibilité à la distance grâce à la grande valeur ajoutée;
- dynamiser les activités industrielles et logistiques qui exploitent sa situation au carrefour des routes atlantiques et offrir des services internationaux dans le cadre du Centre international des affaires à Madère;
- prévoir l'adoption de mesures spécifiques adaptées aux réalités régionales en application de certaines politiques sectorielles communautaires (notamment, dans le domaine des politiques des transports, de l'agriculture, de l'énergie, de l'environnement et de la concurrence);
- valoriser le potentiel humain, par la promotion d'un meilleur niveau d'éducation et de qualification de la population active;
- promouvoir le progrès scientifique et technologique (à travers le renforcement des institutions existantes et l'échange avec l'extérieur);
- créer les conditions de consolidation des ressources humaines, en particulier les plus qualifiées, notamment à travers une infrastructure technique et sociale adéquate;
- préserver l'environnement, en soutenant un développement durable et en assurant de meilleures conditions de vie.

7. Question au choix – Néant.

8. Photo du président de Madère

Voir page 20.

9. Quelques données personnelles et politiques

Alberto João Cardoso Gonçalves Jardim, Président du gouvernement de la Région autonome de Madère, est né à Funchal en 1943. Il est titulaire d'un diplôme en droit de l'Université de Coimbra.

En tant que journaliste professionnel, il fut le directeur du quotidien "Jornal da Madeira" du Diocèse de Funchal et collabora aussi à d'autres hebdomadaires nationaux, régionaux et des pays d'émigration.

Professeur dans l'enseignement technique et secondaire, dirigeant de coopératives et d'associations de solidarité sociale, il fut également directeur du Centre de formation professionnelle de Funchal. Il est conseiller principal dans le système de carrière de la Fonction publique.

Elu député à l'Assemblée de la République et à l'Assemblée législative régionale de Madère, il est Président du gouvernement régional de Madère depuis mars 1978. En cette qualité, il est membre du Conseil d'Etat et du Conseil supérieur de la Défense nationale et du Conseil supérieur de sécurité interne.

Cofondateur à Madère du Parti Social-Démocrate, il préside ses commissions politiques régionales et est Vice-président de la commission politique nationale de ce même parti.

Il est Président honoraire de la Conférence des régions périphériques de la Communauté économique européenne.

Il fut le représentant du Portugal au sein de l'ancien Conseil consultatif des collectivités régionales et locales de la Communauté européenne, à présent remplacé par le Comité des régions, dont il est membre du Bureau.

Il est aussi un des représentants portugais au Congrès des pouvoirs locaux et régionaux du Conseil de l'Europe.

Parmi les titres honorifiques et décorations, signalons la Grande Croix de l'Ordre de l'Infante, Commandeur de Benemêrencia de la Croix Vermeille, et Grande Croix de l'Etoile polaire, de Suède; il s'est aussi vu décerner de nombreuses autres décorations nationales et étrangères et est membre honoraire de diverses institutions. ❑

The Autonomous Region of Madeira

Alberto João Cardoso Gonçalves Jardim
President of the Government of the Autonomous Region of Madeira

1. Brief Description of Madeira

The Autonomous Region of Madeira is situated in the North Atlantic, about 800 kilometres from the coast of Africa, 980 kilometres southwest of Lisbon and 850 kilometres southwest of the archipelago of the Azores.

The Region consists of the Madeira islands (736.75 sq km) and Porto Santo (42.17 sq km), about 40 km from Madeira, and of two groups of smaller uninhabited islands, the Desertas (14.23 sq km) and the Selvagens (3.62 sq km). The Selvagens lie 280 km south of Funchal, not far from the Canary Islands.

All islands in the Madeira archipelago are of volcanic origin and have steep coast lines. The highest peak on the island of Madeira rises to 1,862 metres. Its coast is mostly lined with steep cliffs, creating spectacular ravines which descend straight down into the sea.

The island of Porto Santo is less hilly and has more in the way of flatlands. One of the main obstacles to this island's agricultural development is the permanent shortage of water.

Political and administrative organization

The Autonomous Region of Madeira has legal status and has legislative and executive powers, the terms of which have been laid down in the Constitution of the Portuguese Republic and in the Political and Administrative Statutes of the Autonomous Region of Madeira (Law No 13/91 of 5 June).

The governing bodies of the region are the Regional Legislative Assembly and the Regional Government. At local authority level there are 11 *municipios* (subdivisions of a district) and 53 *freguesias* (literally parishes, subdivisions of the *municipio* which require to have a minimum of 800 voters. The law lays down other conditions for the creation of *freguesias*).

The sovereignty of the Republic is represented by a Minister of the Republic, who is responsible for cooperating with the regional bodies in pursuing the objectives of economic and social development in these regions, particularly aimed at balancing out the disadvantages of Madeira's being an island.

2. Summary of the Main Contributions of the Madeira Region to the European Union

Just like other regions within the European Union, the Madeira Region enriches the diversity, culture and history of Europe.

Situated on the periphery of Europe, the Madeira Region has characteristics which are both exotic and European and which are, to a large extent, the result of a long-standing experience of peoples coming from all four corners of the world.

A temperate climate all year round, a natural beauty and tropical products (bananas, sugar cane, flowers, fruit), a craft industry (Madeira embroidery), local ways and customs, its own culture and history are only some of the elements which make Madeira the 'pearl of the Atlantic'.

World-famous for its Madeira wine, this archipelago is a centre of tourism *par excellence* which adds to the European Union's wealth of tourist attractions.

Just like other remote regions of Europe, the Autonomous Region of Madeira has the ideal conditions for developing certain scientific facilities (an astro-physical observatory) and technological installations, particularly for marine biology research. Actually, Madeira is the seat of the European Council on Environmental Law.

3. The Situation regarding Regionalization in Portugal

The Portuguese Constitution defines the State as a unitary State, which respects the principles of the autonomy of local authorities and democratic decentralization of the administration.

In spite of this general constitutional principle of the unity of the State, the 1976 Constitution of the Portuguese Republic has created two regions which have their own political and administrative statutes and self-governing bodies; these are the Regions of Madeira and of the Azores.

However, the political regionalization of the archipelagos of Madeira and of the Azores is not general government policy and is limited exclusively to these island territories.

So, the Autonomous Regions, being decentralized entities, are institutionalized centres of specialized political decision-making in accordance with regional interests which have their own organs of supreme authority.

The administrative regions are defined as local authorities established by law, which may provide for differences in the system that applies to each of them. They have administrative and financial autonomy and representative bodies which aim to pursue the interests of their respective populations.

That which distinguishes the autonomous system of the archipelagos of Madeira and of the Azores from the system of local authorities, including the administrative regions, is the fact that the archipelagos have 'legislative and governmental' autonomy, with their own governing bodies. However, this autonomy is

limited to the specific interests of each region and is subject to the Constitution and general laws of the Republic.

Although the Autonomous Regions do not have their own constitution, their system has been laid down in the political and administrative statute which lists the matters which are of specific interest to them.

As a result, the system of the Autonomous Regions of Madeira and of the Azores should not be confused with that of the administrative regions. In fact, the administrative regions may have different levels of administrative autonomy but they do not have political autonomy which would be expressed by their having legislative power.

There is currently, in Portugal, much discussion about having administrative regions on the mainland. It should be pointed out that, because of their small land area, the island territories will not be divided into administrative regions.

4. Degree to which the Principle of Subsidiarity is applied in Portugal

The autonomy of Madeira and of the Azores aims at involving their citizens in democratic life so that the administration can respond more effectively to the needs of the island population and ensure their economic and social development.

The aim of this system is to manage resources at regional level, which, along with being part of a sovereign State, enables these regions to escape their natural limitations of being islands and at some distance from the centre of things. It enables them to be treated equally with mainland regions.

The system of autonomy is a result of the decentralized dimension of our democracy. It is a level of power which is closer to each citizen and, consequently, better suited for the effective realization of subsidiarity, seeing that it makes decisions more transparent and ensures closer proximity between the island citizens within the State and the European Union.

The regions may legislate on matters of specific interest to themselves. However, there are limits to this power (which is intended to enable the regions to take action themselves) to the extent that the regions may only act on matters directly affecting them and in the interests of promoting the democratic participation of their citizens, their economic and social development and the observance and defence of regional interests, as well as the strengthening of national unity and the bonds of solidarity amongst all the people of Portugal.

In parallel with political decentralization, the Constitution provides for cooperation between central government and regional bodies in order to ensure the economic and social development of the regions whilst seeking in particular to correct disparities caused by their insular situation.

Thus, the interests of national solidarity oblige the State to support the costs of such disparity, particularly as regards communication, transport, education, culture, social security, health, and energy, and to stimulate the gradual inclusion of the region into wider economic areas, with a national or international dimension (political and administrative status of the Autonomous Region of Madeira).

Moreover, the Constitution provides for the right to be heard in matters which specifically concern the regions and for the right of the regions to participate in negotiations concerning international treaties and agreements directly affecting them and to share in any benefit derived therefrom.

In this context the participation of Portugal in the European Communities is one of the matters of international law directly affecting the Autonomous Regions, and in this respect the regional bodies must be heard. These two regions benefit from Community funds because of their particular nature as archipelagos.

5. Judging from Results to Date, What Can the Regions Expect of the 1996 IGC?

The regions wish to be recognized, as of right, by the 1996 IGC, as Outermost Regions thus benefiting from a classification more fitting to their position economically and socially as is their due in view of the policy of cohesion.

In this context, France, Spain and Portugal will submit proposals to the 1996 Intergovernmental Conference to:

(1) strengthen the concept of Outermost Region as defined in Declaration No 26 of the TEU;
(2) maintain the priority status afforded by the EU in the framework of economic and social cohesion;
(3) be able to adapt Community policies to regional realities in order to respond to local development requirements.

Thus, the outermost regions hope that these objectives will be attained by including in the Treaty a provision which, besides recognizing their specific status, enables the Community institutions not only to adopt special measures in their favour but also to define special conditions for applying the Treaty to their territories.

6. How Can Regional Imbalances Be Reduced?

To reduce regional imbalances persisting in the Community, account will have to be taken of the diversity and extent of existing problems and potential so that adequate strategic options can be chosen, at both national and Community level. This should be done in the perspective of global and sustainable development, while not losing sight of economic and social cohesion.

The development of a region such as Madeira is greatly affected by its insular character and its extremely remote position, which hinders the development of close links and direct relations with other more developed and more centrally situated areas of the EU.

The problems arising from remoteness and from being apart from the continental mainland are accentuated by the small size of the local market, by supply problems linked to the region's special and difficult terrain – particularly for agricultural activity and for the creation of infrastructure and service networks that are essential to the development of economic activity and to the well-being of the population – by the irregular location of

human settlements, and by the delicate balance of local flora and fauna.

It may be stated that largely because of these natural handicaps, the economic structure is weak; traditional activities which generate little revenue and are difficult to make into economically competitive occupations are quite prevalent.

The business sector mainly consists of small undertakings which are low in investment capacity or find it difficult to overcome structural and organizational problems as regards access to the market.

The level of human resources training and technological development is also insufficient.

The low level of regional output has to be partly compensated for by external transfers.

Seen against the increasing globalization of the economy and growing competition, imbalances in economic development and productive capacity will have to be reduced in the context of a strategy of sustainable development which will make it possible to:

- reduce the problems of, and limitations to, accessibility as referred to earlier, particularly by:
  * developing/modernizing infrastructure, marine and air transport facilities, as well as adopting a policy, recognized and perhaps supported at Community level, which aims to provide regular transport compatible with trans-European and worldwide networks and charging tariffs that do not jeopardize interregional competitiveness;
  * modernizing internal transport infrastructures and guaranteeing regular transport between the islands, in order to promote the integration of regional markets and to reduce territorial imbalance;
  * developing information technology infrastructures and pursuing active policies aimed at strengthening the possibilities of access to knowledge, in order to balance the significant disadvantages compared with better equipped more central regions.
- boost the region's particular capacities, particularly by using already existing potential, by consolidating the local tourist industry, by developing more diversified and multifunctional agriculture, by preserving cultural and natural assets, and by conserving and upgrading the natural heritage (which has examples unique in the world);
- support and boost the local craft industry, while, at the same time, expanding product ranges, improving quality and access to the market;
- carry out activities which can be competitive on account of their specific nature and for which distance does not really matter because of the considerable added value involved;
- increase industrial activity by exploiting Madeira's pivotal position on the Atlantic routes and by holding events at the International Business Centre of Madeira;
- take specific measures which are in line with regional realities, in compliance with Community policies on such as transport, agriculture, energy, competition and the environment;
- boost human potential, by promoting higher education as well as improved qualifications amongst the working population;
- stimulate scientific and technological progress (by strengthening existing institutions and exchanges abroad);
- create conditions for consolidating, particularly the highest qualified, human resources, e.g. by means of an adequate technical and social infrastructure;
- preserve the environment, by supporting sustainable development whilst at the same time providing better living conditions.

7. Other questions

None.

8. Photograph of the President of Madeira

See page 20.

9. Some Personal and Political Data

Alberto João Cardoso Gonçalves Jardim, President of the Government of the Autonomous Region of Madeira, was born in Funchal in 1943. He has a degree in law from the University of Coimbra.

As a professional journalist, he was director of the newspaper 'Jornal da Madeira' for the Diocese of Funchal and has also worked for other national and regional weeklies and magazines including for countries where Portuguese have traditionally emigrated to.

A teacher at secondary school and technical college, head of cooperatives and welfare agencies, he has also been Director of the Vocational Training Centre in Funchal. He is Chief Adviser on civil service careers.

Elected as Deputy Member of the Assembly of the Republic and the Regional Legislative Assembly of Madeira, he has been President of the Regional Government of Madeira since March 1978. As such he is a Member of the Council of State and of the Higher Council of National Defence and the Higher Council for Internal Security.

In Madeira he co-founded the Social-Democratic Party, he is Chairman of the Party's regional political committees and Vice-Chairman of the National Political Committee of the Party.

He is Honorary President of the Conference of Peripheral Regions of the European Economic Community.

He represented Portugal on the former Consultative Council of Regional and Local Authorities of the European Community, which has been replaced by the Committee of the Regions, of which he is a Bureau member.

He is also one of the Portuguese representatives at the Congress of Local and Regional Authorities in Europe of the Council of Europe.

Honorary titles and decorations include the Great Cross of the Order of the Infanta, Commander of Benemêrencia of the Vermilion Cross, and the Great Cross of the Pole Star of Sweden; he has also been awarded many other national and foreign decorations and is an honorary member of various institutions. ❑

Die autonome Region Madeira

Alberto João Cardoso Gonçalves Jardim
Präsident der Regierung der autonomen Region Madeira

1. Kurzer Überblick über die besonderen Merkmale der Region Madeira

Die autonome Region Madeira liegt im Nordatlantik, etwa 800 km von der afrikanischen Küste, 980 km von Lissabon im Nordosten und 850 km von der Inselgruppe der Azoren im Nordwesten entfernt.

Die Region umfaßt die Inseln Madeira (736,75 km²) und das 20 Meilen von Madeira entfernt liegende Porto Santo (42,17 km²) sowie zwei Verbände kleinerer unbewohnter Inseln: die Desertas (14,23 km²) und die Selvagens (3,62 km²). Die Selvagens-Inseln liegen 280 km südlich von Funchal und somit in der Nähe der Kanarischen Inseln.

Alle Inseln des Archipels Madeira sind vulkanischen Ursprungs und von Steilküsten umgeben. Die höchste Erhebung der Insel Madeira erreicht eine Höhe von 1.862 Metern. Die Küsten sind allgemein durch schroffe Felswände geprägt, die eindrucksvolle, jäh ins Meer abfallende Tiefen freigeben.

Die Insel Porto Santo ist weniger gebirgig und weist flachere Zonen auf. Eines der größten Hindernisse für die Entwicklung dieser Insel ist – aus landwirtschaftlicher Sicht – vor allem die ständige Wasserknappheit.

Politischer und verwaltungsmäßiger Aufbau

Die autonome Region Madeira ist eine juristische Person des öffentlichen Rechts mit eigenen legislativen und exekutiven Befugnissen, die in der Verfassung der Republik Portugal und dem Politisch-verwaltungsmäßigen Statut der autonomen Region Madeira festgeschrieben sind (Gesetz Nr. 13/91 vom 5. Juni).

Die Regierungsorgane der Region sind die gesetzgebende Regionalversammlung und die Regionalregierung. Auf der Ebene der lokalen Gebietskörperschaften bestehen 11 *concelhos* und 53 *freguesias*.

Die Hoheitsgewalt der Republik wird durch einen Minister der Republik repräsentiert, der verpflichtet ist, in den zuständigen Institutionen mit den regionalen Regierungsorganen bei der Verfolgung der Ziele der wirtschaftlichen und sozialen Entwicklung in diesen Regionen zusammenzuarbeiten, insbesondere im Hinblick auf die Korrektur der aus der Insellage herrührenden Ungleichheiten.

2. Zusammenfassende Darstellung der wesentlichen Beiträge der Region Madeira zur EU

Wie alle anderen Regionen des gemeinschaftlichen Europas trägt die Region Madeira zur Bereicherung der Vielfalt, der Kultur und der Geschichte Europas bei.

Am Rande Europas gelegen weist die Region Madeira zugleich exotische wie europäische Merkmale auf, die in weitem Maße Frucht der Erfahrung sind, die die Region im Laufe der Geschichte in ihren Beziehungen zu Völkern aus aller Welt gesammelt hat.

Das ganzjährig gemäßigte Klima, seine natürliche Schönheit und seine tropischen Erzeugnisse (Bananen, Zuckerrohr, Blumen, Früchte), sein Handwerk (Madeirastickereien), seine Sitten und Gebräuche, seine Kultur und Geschichte sind einige der wichtigsten Faktoren, die Madeira zur "Perle des Atlantiks" machen.

Die Inselgruppe, die in der ganzen Welt für ihren berühmten Madeirawein bekannt ist, bildet ein beispielhaftes Zentrum des Tourismus, das die touristische Vielfalt der Europäischen Union ergänzt.

Wie andere Gebiete in äußerster Randlage der Gemeinschaft bietet die autonome Region Madeira die erforderlichen Voraussetzungen für die Entwicklung bestimmter wissenschaftlicher (Sternwarte) und technologischer Aktivitäten, insbesondere der Forschung im Bereich der Meeresbiologie. Madeira ist bereits Sitz des Europäischen Rates für Umweltrecht.

3. Stand der Regionalisierung in Portugal

Das portugiesische Verfassungsrecht definiert den Staat als Einheitsstaat, der in seinem Aufbau die Grundsätze der Autonomie der örtlichen Selbstverwaltungskörperschaften und der demokratischen Dezentralisierung der öffentlichen Verwaltung beachtet.

Trotz dieses allgemeinen Verfassungsgrundsatzes der Einheit des Staates institutionalisiert die portugiesische Verfassung von 1976 zwei Regionen mit eigenem politisch-verwaltungsmäßigem Status und eigenen Selbstregierungsorganen; es handelt sich dabei um die Regionen Madeira und Azoren.

Die politische Regionalisierung der Inselgruppen Madeira und Azoren ist jedoch kein allgemeiner Grundsatz des staatlichen Aufbaus und beschränkt sich allein auf diese Inselregionen.

Die autonomen Regionen stellen also – als Einheiten, die Gegenstand der Dezentralisierung sind –, institutionalisierte Kerne der spezifischen politischen Entscheidung unter Berücksichtigung regionaler Interessen mit eigenen Selbstregierungsorganen dar.

Die Verwaltungsregionen sind als Selbstverwaltungskörperschaften definiert, die durch Gesetz eingerichtet werden, wobei Unterschiedlichkeiten hinsichtlich der jeweils auf sie anzuwendenden Rechtsverhältnisse festgelegt werden können. Sie verfügen über eine Verwaltungs- und Finanzhoheit und Selbstverwaltungsorgane, die der Verfolgung der Interessen ihrer jeweiligen Bevölkerungen dienen.

Der Autonomiestatus der Inselgruppen Madeira und Azoren unterscheidet sich vom Status der Selbstverwaltungskörperschaften einschließlich des Status der Verwaltungsregionen dadurch, daß diese Inselgruppen – trotz der Begrenzung auf die spezifischen Interessen der jeweiligen Region und des Vollzuges im Rahmen der Verfassung und der allgemeinen Gesetze der Republik – über eine Autonomie in der Gesetzgebung und Regierung und über Selbstregierungsorgane verfügen.

Auch wenn die autonomen Regionen keine eigene Verfassung besitzen, so ist ihr Status doch in einem politisch-verwaltungsmäßigen Statut festgeschrieben, das die Bereiche aufzählt, die für die Regionen von besonderem Interesse sind.

Der Status der autonomen Regionen Madeira und Azoren darf also nicht mit dem der Verwaltungsregionen verwechselt werden. Die Verwaltungsregionen können nämlich einen hohen Grad an Verwaltungsautonomie besitzen, aber keine politische Autonomie, die in einer Beteiligung an der Regierung und an der Gesetzgebung zum Ausdruck kommt.

Derzeit wird in Portugal die Einrichtung von Verwaltungsregionen auf dem Festland diskutiert. In diesem Zusammenhang ist darauf hinzuweisen, daß aufgrund ihrer geringen Größe keine Einteilung der Inselterritorien in Verwaltungsregionen erfolgen wird.

4. Inwieweit findet das Subsidiaritätsprinzip in Portugal Anwendung?

Die Autonomie Madeiras und der Azoren zielt auf die Teilhabe der Bürger am demokratischen Leben ab, um eine effiziente Antwort der Verwaltung auf die Bedürfnisse der Inselbevölkerungen zu ermöglichen, sowie auf ihre wirtschaftlich-soziale Entwicklung.

Der Status soll eine regionale Verwaltung der Ressourcen ermöglichen, die es in Verbindung mit der Solidarität des Staates erlaubt, die durch die Insellage und die große Entfernung dieser Regionen auferlegten Grenzen zu überwinden und eine adäquate Antwort hierauf zu finden.

Der Autonomiestatus ist eine natürliche Folge dezentralisierter Dimension unserer Demokratie und stellt eine dem einzelnen Bürger nähere und dadurch besser zu einer wirklichen Realisierung der Subsidiarität geeignete Ebene der Gewalt dar, da er eine größere Transparenz der Entscheidungen ermöglicht und eine größere Nähe der Bürger der Inseln innerhalb des Staates und der Europäischen Union.

Die Regionen können in Bereichen, die für sie von besonderem Interesse sind, gesetzgeberisch tätig werden. Diese Kompetenz unterliegt jedoch Beschränkungen (wie auch die Handlungsmöglichkeiten der Regionen), wodurch ein Handeln der Regionen nur unter Berücksichtigung der Zweckbestimmtheit der Einrichtung ihres Status oder im Hinblick auf die Förderung der Teilhabe der Bürger am demokratischen Leben, auf die wirtschaftlich-soziale Entwicklung und auf die Beachtung und Verteidigung der Regionalinteressen möglich ist sowie im Hinblick auf die Verstärkung der nationalen Einheit und der Bande der Solidarität zwischen allen Portugiesen.

Neben der politischen Dezentralisierung sieht die Verfassung gleichzeitig eine Zusammenarbeit der Hoheitsorgane mit den regionalen Regierungsorganen vor, um die wirtschaftliche und soziale Entwicklung der Regionen zu gewährleisten, insbesondere im Hinblick auf die Korrektur der aus der Insellage herrührenden Ungleichheiten.

Die nationale Solidarität verpflichtet den Staat also, sich an den Kosten des aus der Insellage resultierenden Ungleichgewichts zu beteiligen, insbesondere im Bereich der Kommunikation, des Transportwesens, der Erziehung, Kultur, sozialen Sicherheit, des Gesundheitswesens und der Energie, und die schrittweise Einbeziehung der Region in größere nationale oder internationale Wirtschaftsräume zu fördern (Politisch-verwaltungsmäßiger Statut der autonomen Region Madeira).

Ferner räumt die Verfassung das Recht auf Anhörung in allen Angelegenheiten ein, die für die Regionen von spezifischem Interesse sind. Die Verfassung erkennt den autonomen Regionen das Recht auf Mitwirkung an der Aushandlung der sie direkt betreffenden internationalen Abkommen und Verträge zu sowie das Recht, an den sich aus diesen ergebenden Vorteilen Anteil zu haben.

In diesem Zusammenhang ist die Beteiligung Portugals an den Europäischen Gemeinschaften einer der Bereiche internationalen Rechts, der die autonomen Regionen direkt berührt und in denen die Anhörung der regionalen Regierungsorgane verpflichtend vorgeschrieben ist. Aufgrund ihrer besonderen Gegebenheiten erhalten die Inselgruppen alle Begünstigungen aus den Gemeinschaftsfonds.

5. Welche Erwartungen können die Regionen angesichts der bisher erzielten Ergebnisse in die Regierungskonferenz 1996 setzen?

Im Rahmen der Regierungskonferenz 1996 wünschen die Regionen ihre vollwertige Anerkennung als Gebiete in äußerster Randlage der Gemeinschaft und daraus resultierend angesichts der Zielsetzungen, an denen die Politik des Zusammenhalts ausgerichtet ist, besser auf ihre wirtschaftliche und soziale Entwicklung abgestimmte Rahmenbedingungen.

In diesem Zusammenhang werden Frankreich, Spanien und Portugal der Regierungskonferenz 1996 die folgenden Vorschläge unterbreiten:

(1) die Stärkung des Konzepts der Gebiete in äußerster Randlage der Gemeinschaft wie dieses in Erklärung 26 EUV festgelegt wird;
(2) die Beibehaltung der vorrangigen Unterstützung durch die EU im Rahmen des wirtschaftlichen und sozialen Zusammenhaltes;
(3) die Möglichkeit einer Anpassung der Gemeinschaftspolitiken an die regionalen Realitäten, um den Entwicklungsbedürfnissen zu entsprechen.

Die Gebiete in äußerster Randlage der Gemeinschaft hoffen, daß diese Ziele durch Aufnahme einer Bestimmung in den Vertrag erreicht werden, die – neben der Anerkennung ihres Sonderstatuts – nicht nur den Gemeinschaftsinstitutionen die Annahme besonderer Maßnahmen zu ihren Gunsten erlaubt, sondern auch die Festlegung besonderer Bedingungen hinsichtlich der Anwendung des Vertrages in ihren Gebieten ermöglicht.

6. Wie können die regionalen Ungleichgewichte abgebaut werden?

Will man die in der Europäischen Gemeinschaft fortbestehenden regionalen Ungleichgewichte abbauen, so muß man die Verschiedenartigkeit der Probleme und bestehenden Potentiale und ihre jeweilige Dynamik berücksichtigen, um – sowohl auf nationaler wie auch auf gemeinschaftlicher Ebene – im Hinblick auf die globale und dauerhafte Entwicklung und unter Beachtung des wirtschaftlichen und sozialen Zusammenhaltes geeignete strategische Entscheidungen treffen zu können.

Die Entwicklung einer Region wie Madeira ist stark durch den Inselcharakter und die Lage am äußersten Rand der Gemeinschaft beeinflußt, die mit schwerwiegenden Problemen der Erreichbarkeit in den Beziehungen nach außen verbunden ist und eine Annäherung an stärker entwickelte und zentraler gelegene Gebiete der Gemeinschaft schwierig macht.

Die Probleme aufgrund des unzusammenhängenden Gebiets und der Entfernung werden durch die geringe Größe des Marktes, Versorgungsschwierigkeiten resultierend aus der angesichts der Gebirgsstruktur ungünstigen spezifischen Charakteristik des Oberflächenreliefs – insbesondere für die landwirtschaftliche Nutzung und für den Aufbau einer Infrastruktur und von Dienstleistungsnetzen, die für die Entwicklung einer wirtschaftlichen Tätigkeit und den Wohlstand der Bevölkerung wesentlich sind –, durch eine ungleiche Verteilung städtischer Strukturen und durch die starke Anfälligkeit der Natur noch

verstärkt.

Großenteils aufgrund dieser naturbedingten Nachteile ist die Wirtschaftsstruktur nur schwach. Traditionelle Tätigkeiten, die ein geringes Einkommen schaffen und nur schwer in ein wettbewerbsfähiges Wirtschaftsmodell einzugliedern sind, haben in ihr ein erhebliches Gewicht.

Der Unternehmenssektor setzt sich hauptsächlich aus zahlreichen kleinen Unternehmen zusammen, die nur über eine geringe Investitionsfähigkeit und ein geringes Potential zur Überwindung der strukturellen und organisatorischen Schwierigkeiten des Zugangs zum Markt verfügen.

Das Bildungsniveau der Arbeitskräfte und das Niveau der technologischen Entwicklung sind ebenfalls unzureichend.

Die geringe Höhe des regional erwirtschafteten Ertrages muß teilweise durch einen Transfer externer Mittel ausgeglichen werden.

Angesichts einer zunehmend weltweit ausgerichteten Wirtschaft und einer Intensivierung des Wettbewerbs muß die Verringerung der Ungleichgewichte im Bereich der wirtschaftlichen Entwicklung und der Produktionskapazitäten im Rahmen einer dauerhaft angelegten Entwicklungsstrategie erfolgen, die es ermöglicht:

– die weiter oben erwähnten Probleme und Engpässe im Bereich des Zugangs abzuschwächen, und zwar vor allem durch:
  * die Schaffung/Modernisierung von logistischen Infrastrukturen und von Infrastrukturen des See- und Lufttransports sowie durch die Verfolgung einer auf gemeinschaftlicher Ebene anerkannten und eventuell unterstützten Politik, die unter Preisbedingungen, die nicht die interregionale Wettbewerbsfähigkeit gefährden, auf die Sicherstellung einer regelmäßigen und in kongruenter Form in die transeuropäischen und weltweiten Netze eingegliederten Beförderung abzielt,
  * die Modernisierung der internen Verkehrsinfrastruktur und die Gewährleistung einer regelmäßigen Transportverbindung zwischen den Inseln, um so eine Verflechtung der regionalen Märkte zu fördern und die territorialen Ungleichgewichte zu verringern,
  * die Entwicklung von Infrastrukturen im Bereich der Information und die Annahme von aktiven Politikvorhaben, die die Möglichkeiten des Zugangs zu Kenntnissen verbessern, um hierdurch eine Situation des beträchtlichen Nachteils im Verhältnis zu den besser ausgestatteten zentralen Regionen zu verhindern;
– die spezifischen regionalen Fähigkeiten zu nutzen, insbesondere durch Ausschöpfung der bereits bekannten Potentiale sowie durch eine Konsolidierung der Nutzung des Fremdenverkehrs, die Entwicklung einer stärker diversifizierten und multifunktionalen Landwirtschaft, die Wahrung der landschaftlichen und kulturellen Werte, den Erhalt und die Nutzung des Naturerbes (das über weltweit einzigartige Werte verfügt);
– das Handwerk bei gleichzeitiger Stärkung seiner Bedeutung für die Innovation, die Qualität und die Nähe des Marktes zu nutzen und zu unterstützen;
– Tätigkeiten umzusetzen, die aufgrund ihrer Besonderheit und der durch ihren großen Mehrwert geringen Anfälligkeit gegenüber der Entfernung wettbewerbsfähig sein können;
– die Dynamik logistischer und industrieller Tätigkeiten zu stärken, die die Lage im Schnittpunkt der atlantischen Verkehrswege nutzen, und internationale Dienstleistungen durch das Internationale Geschäftszentrum in Madeira anzubieten;
– die Annahme spezifischer, an die regionalen Gegebenheiten angepaßter Maßnahmen bei der Anwendung bestimmter sektorbezogener Gemeinschaftspolitiken (insbesondere im Bereich des Verkehrswesens, der Landwirtschaft, der Energie, des Umweltschutzes und des Wettbewerbs) vorzusehen;
– das menschliche Potential durch Förderung einer besseren allgemeinen und beruflichen Bildung der erwerbstätigen Bevölkerung zu nutzen;
– den wissenschaftlichen und technologischen Fortschritt (durch eine Stärkung der bestehenden Institutionen und den externen Austausch) zu fördern;
– die Bedingungen für eine Bindung der Arbeitskräfte und insbesondere der qualifiziertesten unter ihnen vor allem durch die Errichtung einer adäquaten fachlichen und sozialen Infrastruktur zu schaffen;
– die Umwelt durch die Unterstützung einer dauerhaften Entwicklung und die Förderung besserer Lebensbedingungen zu schützen.

7. Offene Frage

Entfällt.

8. Foto

Siehe Seite 20.

9. Einige Angaben zur Person und zur politischen Laufbahn

Alberto João Cardoso Gonçalves Jardim, Präsident der Regierung der autonomen Region Madeira, wurde 1943 in Funchal geboren. Er ist Absolvent in Rechtswissenschaften der Universität Coimbra.

Während seiner Tätigkeit als Berufsjournalist war er Direktor der Tageszeitung "Jornal da Madeira" der Diözese Funchal und Mitarbeiter weiterer nationaler, regionaler und in zwei Emigrationsländern erscheinender Wochenzeitschriften.

Er war Lehrer im fachtechnischen und sekundären Unterrichtsbereich, Genossenschaftsdirektor und Leiter von Verbänden der sozialen Solidarität sowie auch Direktor des Zentrums für berufliche Bildung in Funchal. Im öffentlichen Dienstsystem hat er das Amt eines Hauptberaters (*assessor principal*) inne.

Nach der Wahl in die Versammlung der Republik und die gesetzgebende Regionalversammlung Madeiras ist er seit März 1978 Präsident der Regionalregierung Madeiras. In dieser Funktion ist er Mitglied des Staatsrates, des Obersten Rates der nationalen Verteidigung und des Obersten Rates für innere Sicherheit.

Er war Mitbegründer der sozialdemokratischen Partei in Madeira und ist Präsident der regionalen politischen Ausschüsse sowie Vizepräsident des nationalen politischen Ausschusses dieser Partei.

Er ist Ehrenpräsident der Konferenz der Regionen in Randlage der Europäischen Wirtschaftsgemeinschaft.

Er war der Vertreter Portugals im früheren Beirat der regionalen und lokalen Gebietskörperschaften der Europäischen Gemeinschaft, dem Vorläufer des heutigen Ausschusses der Regionen, in dem er Mitglied des Präsidiums ist.

Daneben ist er einer der Vertreter Portugals im Kongreß der Gemeinden und Regionen des Europarates.

Er ist ferner Träger zahlreicher nationaler und ausländischer Ehrenorden und -bezeichnungen sowie Ehrenmitglied verschiedener Einrichtungen. ❑

MADEIRA – Dados estatisticos /
MADERE – Données statistiques /
MADEIRA – Statistical Data /
MADEIRA – Statistischer Überblick

Dados/Données/ Data/Daten	**Ano/Année/ Year/Jahr**	**Valores absolutos/ Valeurs absolues/ Absolute values/ Absolutwerte**	**% Portugal**
Habitantes/Habitants/ Inhabitants/Einwohner	1994	255.970	Crescimento efectivo/Croissance effective/ Effective growth/ Effektives Wachstum 1981-1994: 7.2
Taxa de actividade/Taux d'activité/ Total employed/Gesamtbeschäftigtenzahl	1995		43.2
Taxa de desemprego/Taux de chômage/ Unemployment rate/Arbeitslosenrate	1995		5.0
Emprego por sectores Emploi par secteur Employment by sectors Beschäftigung nach Bereichen Primário/Primaire/Primary/Primärbereich Secundário/Secondaire/Secondary/Sekundärbereich Terciário/Tertiaire/Tertiary/Tertiärbereich	1995		 12.6% 30.9% 55.9%
PIB/PIB/GDP/BIP per capita/par habitant/ per capita/je Einwohner	1992	788.964 Escudos	
PIB/PIB/GDP/BIP Estrutura/structure/ structure/nach Bereichen: Primário/Primaire/Primary/Primärbereich Secundário/Secondaire/Secondary/Sekundärbereich Terciário/Tertiaire/Tertiary/Tertiärbereich	1985-1992		– – 17.1 13.9 31.7 29.7 51.2 56.4
Exportações/Exportations/ Exports/Ausfuhren	1992	77.757 million ecus	
Importações/Importations/ Imports/Einfuhren Principais países de importação/ Principaux pays d'importation/ Major import partners/ Haupteinfuhrländer:	1992 1992	595.277 million ecus	 Portugal 78.9% UE/UE/EU/EU 15.3% EFTA/AELE/EFTA/EFTA 3.2% Outros/Autres/Others/Andere 2.6%
Principais países de exportação/ Principaux pays d'exportation/ Major export partners/ Hauptausfuhrländer:	1992		Portugal 62.8% UE/UE/EU/EU 22.8% EFTA/AELE/EFTA/EFTA 3.9% Outros/Autres/Others/Andere 10.5%
Principais produtos exportados/ Principaux produits d'exportation/ Major export products/ Hauptausfuhrerzeugnisse:	1992		Bananas/Bananes/Bananas/Bananen/ 31.5% Bordados/Broderies/Embroderies/Stickereien 13.6% Vinho/Vin/Wine/Wein 10.8% Obras de Vime/Oeuvres d'art/Art /Kunstgewerbe 3.1% Flores/Fleurs/Flowers/Blumen 1.3%

NOUVELLE PUBLICATION DE L'IEAP !

"Réflexion stratégique sur les mécanismes de participation des Régions à l'Union européenne dans la perspective de la CIG de 1996"
(Actes de la 1ère Conférence des Régions de l'UE)
Sous la direction de Eduardo Sánchez Monjo
IEAP 1997, environ 300 pages

ISBN 90-6779-110-5 **NLG 65**

* ***Pour faciliter la compréhension de cet ouvrage et lui assurer une large diffusion, les textes sont publiés dans la langue originale mais aussi en traduction française, anglaise et allemande.***

Le 26 janvier 1996, une importante manifestation s'est déroulée au Siège des Etats Provinciaux de la Province du Limbourg néerlandais, à Maastricht. Cet événement s'est tenu dans l'emblématique salle où fut signé le Traité sur l'Union européenne, document d'une importance primordiale pour les régions communautaires. Il s'agissait de la première Conférence des régions de l'Union européenne organisée par l'IEAP, avec la collaboration de l'Assemblée des Régions d'Europe (ARE), sur le thème d'une "Réflexion stratégique sur les mécanismes de participation des Régions à l'Union européenne dans la perspective de la Conférence intergouvernementale (CIG) de 1996".

Cette Conférence était placée sous la présidence du Président de l'Assemblée des Régions d'Europe et de la Communauté autonome de la Catalogne, M. Jordi Pujol, qui prononça le discours d'ouverture. Son intervention fut suivie par les discours d'éminentes personnalités issues des institutions de l'UE et des plus hautes instances régionales.

Le corps de cette publication reprend les interventions, à caractère politique ou académique, faites par les orateurs à cette occasion. Cet ouvrage contient aussi la déclaration finale et les conclusions dégagées à l'issue de la réunion.

Photograph taken at the official opening ceremony of the 1997 academic year of the Escola Galega de Administración Pública, 13 February 1997, Santiago de Compostela. (From left to right: Domingo Bello, Director de la Escola Galega de Administración Pública (E); Isabel Corte-Real, Director-General of EIPA; Manuel Fraga, Presidente de la Xunta de Galicia (E); and Dositeo Rodriguez; Conselleiro da Presidencia de la Xunta de Galicia (E))

ANNOUNCEMENTS / *ANNONCES*

Seminar / *Séminaire*

European Negotiations / *Négociations européennes*

Maastricht
2-6 June, 29 September-3 October and 17-21 November 1997 /
du 2 au 6 juin, du 29 septembre au 3 octobre
et du 17 au 21 novembre 1997

This seminar practises the strategies and tactics relevant to European negotiation situations and examines ways in which to promote their efficient conduct. It is intended for civil servants from Member States and Community institutions and is of a highly practical and interactive nature. While providing a theoretical framework, the seminar is above all designed to help participants improve their negotiations skills. An added value is the multinational composition of the group which provides participants with a rare opportunity to explore and develop together the vast potential inherent in the unique process of European negotiations.

Ce séminaire met en pratique les stratégies et tactiques pertinentes pour des situations de négociation européenne et examine les moyens d'en accroître l'efficacité. La nature de ce séminaire destiné aux fonctionnaires des Etats membres de l'UE et des institutions communautaires est fortement pratique et interactive. Parallèlement à cet objectif qui vise à fournir un cadre théorique, le séminaire est avant tout conçu pour aider les participants à améliorer leurs aptitudes de négociation. La composition multinationale du groupe est une valeur ajoutée et offre aux participants une occasion unique d'explorer ensemble le vaste potentiel inhérent au processus de négociations européennes.

Follow-Up / *Suivi*

European Negotiations Follow-Up (A): 'Refresher Course in European Negotiations'
Maastricht, 21-23 May 1997

This seminar expands the subjects of EU-specific bilateral and multilateral negotiations. This course will deepen the themes and skills introduced in the basic 'European Negotiations' seminar.

Négociations européennes – suivi (A): "Cours de mise à jour sur les négociations européennes"
Maastricht, du 21 au 23 mai 1997

Ce séminaire sera consacré aux thèmes des négociations bilatérales et multilatérales propres à l'UE. Il approfondira les questions et aptitudes déjà abordées lors du séminaire de base sur les "Négociations européennes".

European Negotiations Follow-Up (B): 'Specialization Programme in Chairmanship, Mediation and Conflict Resolution'
Maastricht, 9-12 September 1997

This seminar is intended for those who have already followed the basic 'European Negotiations' seminar. Consequently, it aims to bring participants to appreciate and practice further negotiation techniques that are fundamental to efficient multilateral negotiations dealing with complex issues, and also to assist them in finding workable solutions in conflict situations.

Négociations européennes – suivi (B): "Programme de spécialisation en présidence, médiation et résolution de conflits"
Maastricht, du 9 au 12 septembre 1997

Ce séminaire est destiné aux personnes qui ont déjà participé au séminaire de base sur les Négociations européennes. Par conséquent, son but est d'amener les participants à apprécier et pratiquer d'autres techniques de négociation qui sont fondamentales pour des négociations multilatérales efficaces sur des sujets complexes, et aussi de les aider à trouver des solutions faisables dans des situations conflictuelles.

Working languages: English and French (with interpretation).

Langues de travail: anglais et français (l'interprétation simultanée étant assurée).

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Tel: + 31 43 – 3296 226; Fax: + 31 43 – 3296 296; E-Mail: nde@eipa.nl

Seminar

Who's Afraid of European Documentation?

Maastricht, 28-30 May 1997

The European Institute of Public Administration is holding the fourth seminar on European Documentation at its premises in Maastricht on 28-30 May 1997.

The aim of this seminar is to provide those working continually or occasionally in the field of European affairs, both inside and outside Community institutions, with the ability to trace and use European documents, by offering them a complete survey of the main European documents (off and on-line) and methods of gaining access to them.

The seminar, which will be conducted in English, is open to all persons working in or with European affairs, Community officials, legal experts, information specialists from the Member States of the EU or from applicant Member States.

To obtain more information and registration forms, please contact:
Marieke van Zeijts or Joyce Groneschild, Programme Organization, EIPA
P.O. Box 1229, NL – 6201 BE Maastricht
Tel.: +31 43 3296 233/326; Fax: +31 43 3296 296; E-mail:mze@eipa.nl or jog@eipa.nl

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Seminar

Transparency and Openness

Maastricht, 18-19 September 1997

An important feature of the Treaty on European Union is its emphasis on opening up the work of the Union to the public, on rendering the decision-making process more transparent and on giving free access to its official documents.

The terms 'Transparency and Openness' first made their appearance during the negotiations leading up to the Treaty on European Union (the Maastricht Treaty) and have been, from the time of the ratification of the Treaty through to the Intergovernmental Conference of 1996/97, matters of prime importance, as much for European Institutions as for the Member States.

The seminar which EIPA is organizing on 18 and 19 September 1997 brings together many and varied views on how to deal with Transparency and Openness. There will be speakers representing different points of view, with different backgrounds and different experiences.
Speakers include Community officials, academics, journalists, an information specialist, a member of the European Parliament, and the European Ombudsman.

The seminar will be conducted in English and is open to all interested persons.

For more information and registration forms, please contact:
Ms Marieke van Zeijts, Programme Organization, EIPA
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Tel.: +31 43 3296 233; Fax: +31 43 3296 296; E-mail: mze@eipa.nl

Colloquium

Managing the New (Treaty on) European Union: Coping with Flexibility and Legitimacy

Maastricht, 27-28 November 1997

The European Institute of Public Administration is organizing a colloquium on the managerial aspects of the new Treaty on European Union. The prospect of enlargement has presented the IGC-negotiators with the challenge of designing a treaty in which the reinforced institutional unity has a proper balance of flexibility and legitimacy.

On the first day of the colloquium, prominent speakers from various European institutions will give presentations on the outcome of the Intergovernmental Conference. On the second day, participants can sign up for three workshops in which the challenges of flexibility and legitimacy for each of the three pillars of the Union will be discussed and introduced separately by experts in the relevant fields.

The registration fee will be NLG 1100. EIPASCOPE readers who are interested in participating or in receiving more information about the event should contact Ms. An Cazaerck (tel: +31-43-329 6231; e-mail: aca@eipa.nl) or Ms. Winny Janssen (tel: +31-43-329 6320; e-mail: wja@eipa.nl); fax: +31-43-329 6296.

Colloque

Gérer le nouveau Traité sur l'Union européenne: l'importance d'allier flexibilité et légitimité

Maastricht, les 27 et 28 novembre 1997

L'Institut européen d'administration publique organise un colloque sur les aspects managériaux du nouveau Traité sur l'Union européenne. Dans la perspective de l'élargissement, les négociateurs de la Conférence intergouvernementale (CIG) se sont vus confrontés au défi de concevoir un traité alliant flexibilité et légitimité dans le contexte d'une unité institutionnelle renforcée.

Au cours de la première journée du colloque, d'éminents orateurs issus de différentes institutions européennes feront des interventions sur les résultats de la Conférence intergouvernementale. Durant la deuxième journée, les participants pourront s'inscrire à trois ateliers où les défis liés à la flexibilité et à la légitimité seront débattus pour chacun des trois piliers de l'Union et introduits séparément par des spécialistes en la matière.

Les droits d'inscription s'élèvent à NLG 1100. Les lecteurs d'EIPASCOPE qui souhaitent participer à ce colloque ou recevoir un complément d'information peuvent s'adresser à Mme An Cazaerck (tél.: +31-43-329 6231; e-mail: aca@eipa.nl) ou à Mme Winny Janssen (tél.: +31-43-329 6320; e-mail: wja@eipa.nl); fax: +31-43-329 6296.

Sixth Schengen Colloquium

Maastricht, 5-6 February 1998

The Dutch Presidency has proposed that the Schengen *Acquis* be incorporated into the European Union. The Presidency has recommended that the new Treaty should include a provision whereby all relevant Schengen legislation would be incorporated as it exists; that there should be a provision whereby Member States which are not parties to Schengen can participate in the *"acquis"*; and that there should be a provision for Member States which are not parties to Schengen to be allowed to opt out constructively on a case-by case basis. With that notion in mind, flexibility takes the path of "à la carte integration".

If the proposals of the Dutch Presidency are accepted, the Schengen Agreement will not have a long future ahead of it. However, any incorporation of Schengen will not take place until after the new Treaty is ratified. During the Colloquium on 5 and 6 February 1998, issues such as relationships with third countries, border control statistics, the functioning of the Schengen Information System and the role of the citizen will be central, as well as the latest political developments on Schengen's integration into the new Treaty.

Title, topics and contact number will be announced in the next edition of EIPASCOPE.

Séminaire *Seminar* Seminar

Comités et comitologie dans le processus politique de la Communauté européenne

Committees and Comitology in the Political Process of the European Community

Ausschüsse und Komitologie im politischen Prozeß der Europäischen Gemeinschaft

Maastricht, 23-26 September 1997

Les comités jouent un rôle essentiel dans les différentes phases du processus politique de la Communauté européenne dans la mesure où ils participent à l'élaboration, la décision et la mise en oeuvre des politiques communautaires. Plus précisément, les comités experts ou consultatifs assistent la Commission dans le processus législatif; les groupes de travail ou comités du Conseil préparent les décisions des ministres; et, dans le processus de mise en oeuvre, les comités désignés sous le nom de "comitologie" contrôlent la mise en oeuvre du droit communautaire.

Committees play a significant role in the various phases of the political process in the European Community. They participate in designing, deciding and implementing EC policy: expert or advisory committees help the Commission in the process of drafting legislation; Council working parties or committees prepare decisions of the ministers; and in the process of implementation, so-called 'Comitology' committees supervise the implementation of EC law.

Ausschüsse spielen in verschiedenen Phasen des politischen Prozesses in der Europäischen Gemeinschaft eine wichtige Rolle. Sie sind an der Erarbeitung, Entscheidung und Umsetzung von EG-Politik beteiligt: Beratende Ausschüsse oder sogenannte Expertenausschüsse helfen der Kommission bei der Ausarbeitung von Rechtsakten, Arbeitsgruppen oder Ausschüsse des Rates bereiten Ministerentscheidungen vor, sogenannte „Komitologie"-Ausschüsse überwachen die Umsetzung von EG-Recht.

Ce séminaire vise à aider les fonctionnaires des Etats membres et des institutions communautaires à mieux comprendre le rôle exercé par ces comités dans le processus décisionnel d'un point de vue à la fois théorique et pratique. La première partie du séminaire sera consacrée à une typologie des comités – sur la base de leur fonction dans le processus décisionnel – et sera suivie d'exercices de simulation et d'études de cas des différents types de comités en vue d'illustrer le rôle qu'ils jouent dans le processus d'élaboration de politiques ainsi que leur mode de fonctionnement.

The seminar is designed to help civil servants from the Member States and the Community institutions to gain a better understanding of the role these committees play in the policy process both from a theoretical and from a practical point of view. In the first part of the seminar a typology of committees – based on their function in decision-making – will be developed, followed by simulations and case studies of the various types of committees designed to illustrate the role they play in the policy process and the way they operate.

Das Seminar richtet sich an Bedienstete der Mitgliedstaaten und Gemeinschaftsinstitutionen, die ein besseres Verständnis der Bedeutung und Funktion erlangen möchten, die diese Ausschüsse im politischen Prozeß sowohl aus theoretischer als auch aus praktischer Sicht spielen. Im ersten Teil des Seminars wird eine Einteilung der Ausschüsse, basierend auf ihrer Funktion im Entscheidungsprozeß, entwickelt. Im Anschluß daran verdeutlichen Simulationen und Fallstudien zu den verschiedenen Ausschußtypen die Arbeitsweise und die Rolle, die diese im politischen Prozeß spielen.

Cette approche alliant discussions théoriques et apprentissage interactif donnera aux participants l'occasion d'améliorer leurs connaissances théoriques et pratiques du travail des comités sous tous les angles du processus d'élaboration et de mise en oeuvre des politiques communautaires.

The combination of theoretical discussions and interactive learning will give participants the opportunity to improve their theoretical and practical knowledge of the work of committees in all aspects of Community policy-making and implementation.

Die Verbindung von theoretischer Diskussion und interaktivem Lernen gibt den Teilnehmern die Möglichkeit, ihr theoretisches und praktisches Wissen über Ausschüsse in allen Bereichen der Rechtsetzung und Umsetzung von EG-Politiken zu erweitern.

Les langues de travail du séminaire seront le français, l'anglais et l'allemand.

Seminar working languages: English, French and German.

Arbeitssprachen des Seminars sind Englisch, Französisch und Deutsch.

Si vous souhaitez obtenir de plus amples informations ou recevoir un formulaire d'inscription, veuillez contacter:

For more information and registration forms please contact:

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Visitors to EIPA

The most recent of the regular annual meetings of the three European institutes – the College of Europe in Bruges, the European University Institute in Florence and EIPA in Maastricht took place at EIPA on 3 March 1997. The next annual meeting will take place in Bruges.

From left to right: Antonio Zanardi Landi, Secretary-General of the European University Institute, Florence (I); Isabel Corte-Real, Director-General of EIPA; and Otto von der Gablentz, Rector of the College of Europe, Bruges (B)

EIPA Staff News

* Newcomers at EIPA

– **Dr Antonio Bar Cendón** (E) joined EIPA Maastricht on 15 January 1997 as Professor of Constitutional Law

– **Mr Stephen Harris** (UK) joined EIPA Maastricht on 24 March 1997 as Senior Lecturer

Recent and Forthcoming EIPA Publications

Recent

A Guide to the Enlargement of the European Union: Determinants, Process, Timing, Negotiations
Phedon Nicolaides/Sylvia Raja Boean
EIPA 1997, 50 pages: **NLG 17.50**
(Only available in English)

The Implementation of Schengen: First the Widening, Now the Deepening
Monica den Boer (ed.)
EIPA 1997, 173 pages: **NLG 65**
(Mixed texts in English and French)

Der öffentliche Dienst im Europa der Fünfzehn: Lage und Perspektiven
Astrid Auer, Christoph Demmke und Robert Polet
Vorwort von Herrn Prof. Dr. Siedentopf, Professor an der Hochschule für Verwaltungswissenschaften, Speyer
EIPA 1997, 277 Seiten: **NLG 65**
(auch in Französisch und Englisch erhältlich)

Shaping European Law and Policy: The Role of Committees and Comitology in the Political Process
Robin H. Pedler and Guenther F. Schaefer (eds.)
EIPA 1996, 204 pages: **NLG 43**
In collaboration with the European Centre for Public Affairs

The European Union's Common Foreign and Security Policy: The Challenges of the Future
Spyros A. Pappas/Sophie Vanhoonacker (eds)
EIPA 1996, 149 pages: **NLG 65**
(Also available in French)

Civil Services in the Europe of Fifteen: Current Situation and Prospects
Astrid Auer, Christoph Demmke and Robert Polet
Preface by Professor Dr. Siedentopf, Professor at the Hochschule für Verwaltungswissenschaften, Speyer
EIPA 1996, 240 pages: **NLG 65**
(Also available in French and German)

Guide to Official Information of the European Union
Revised Edition of 'Guide to European Information'
Veerle Deckmyn
EIPA 1996, 58 pages: **NLG 30**
(Also available in French)

Les pouvoirs des Länder, cantons, régions et communautés autonomes en matière d'action extérieure et communautaire: Cadre législatif
Edité par le Secrétariat général de l'action extérieure du Gouvernement basque
IEAP 1996, 305 pages: **NLG 65**
(Only available in French)

De Schengen à Maastricht: voie royale et course d'obstacles
Sous la direction d'Alexis Pauly
IEAP 1996, 285 pages, **NLG 65**
(Texts in original language – French and English)

The Political Economy of European Integration
Finn Laursen (ed.)
EIPA/Kluwer Law International* 1995, 312 pages: **NLG 80** (Pb.)
(Only available in English)

Procedural Aspects of EC Competition Law
The Rt.Hon. The Lord Slynn of Hadley/Spyros A. Pappas (eds)
EIPA 1995, 84 pages: **NLG 50**
In collaboration with the United Kingdom Association for European Law
(Only available in English)

The Ratification of the Maastricht Treaty: Issues, Debates and Future Implications
Finn Laursen/Sophie Vanhoonacker (eds)
EIPA/Martinus Nijhoff Publishers* 1994, 544 pages: **NLG 95** (Pb.)
(Only available in English)

Procédures administratives nationales de préparation et de mise en oeuvre des décisions communautaires
Sous la direction de Spyros A. Pappas
IEAP 1994, 498 pages: **NLG 75**
(Also available in English)

The Changing Role of Parliaments in the European Union
Finn Laursen/Spyros A. Pappas (eds)
EIPA 1995, 190 pages: **NLG 70**
(Only available in English)

Property Rights and Privatization in the Transition to a Market Economy: A Comparative Review
Renzo Daviddi (ed.)
EIPA 1995, 269 pages: **NLG 65**
(Only available in English)

Forthcoming

Managing Universal Service Obligations in Public Utilities in the European Union
(Compilation of papers)
EIPA 1997, approx. 130 pages: NLG 25
(Only available in English)

Réflexion stratégique sur les mécanismes de participation des Régions à l'Union européenne dans la perspective de la CIG de 1996
(Actes de la 1ère Conférence des Régions de l'UE)
Sous la direction de Eduardo Sánchez Monjo
IEAP 1997, environ 300 pages: NLG 65
(les textes sont publiés dans la langue originale mais aussi en traduction française, anglaise et allemande)

Undercover Policing and Accountability from an International Perspective
Monica den Boer (ed.)
EIPA 1997, approx. 150 pages: **NLG 65**
(Will only be available in English)

*** Hardcovers of co-publications with Kluwer/Nijhoff are available from Kluwer Law International, The Hague.**

All prices are subject to change without notice.
A complete list of EIPA's publications is available on request from the Publications Department.

Editorial Team: Veerle Deckmyn, Alain Guggenbühl, Claude Rongione, Eduardo Sanchez Monjo.
Typeset and layout by the Publications Department, EIPA.

Printed by Atlanta, Belgium.

The views expressed in this publication are those of the authors and not necessarily those of EIPA.
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