28
1986

Reports to
the Government

Netherlands Scientific Council
for Government Policy

The Unfinished European Integration

The Hague, 1986

Netherlands Scientific Council for Government Policy

To: The Prime Minister/Minister for General Affairs
From: The Scientific Council for Government Policy
Re: 'The Unfinished European Integration'

The Hague, 26 March 1986

Herewith the Scientific Council submits its report 'The Unfinished European Integration'.

This report focuses particularly on the need for the further completion of market integration in the European Community. For effectiveness not to be lost, this will require integration of government policy. The minimal reallocation of responsibilities between the Community and the Member States required for this purpose has been examined in various policy fields.

The report outlines ways towards an offensive European industrial and technological policy and towards a more market-oriented Common Agricultural Policy, with a general reduction in prices towards world levels.

Finally a number of recommendations are made for co-ordinating policy preparation and supervision in the Netherlands more effectively with the process of European integration.

Under the procedures laid down in the Scientific Council for Government Policy (Establishment) Act, the Council requests that the report be placed on the Agenda of the Council of Ministers, and would welcome any comments it may have.

CONTENTS

1. GENERAL

This report focuses on the need to complete the stagnating process of European economic integration by finishing the internal market for industrial products and services and by a reorientation of the Common Agricultural Policy (CAP). Such progress is essential if the Community is to withstand the threat posed by structural changes at world level, especially the competition to which it is exposed from the United States, Japan and the newly industrialized countries.

As discussed in *chapter 1*, the capacity to conduct national economic policies has been eroded by the unfinished state of market integration, a 'leakage' effect for which the Community has so far been unable to compensate. On the assumption that there will be no appreciable decline in the need for government intervention over the next few years, and that the continuing completion of the internal market will further undermine the capacity of the Member States to conduct independent policies, enlargement of the Community's policy-making capacity in the coming years will continue to demand major attention.

This report accordingly deals with two aspects of the integration process: 'negative' integration (meaning the elimination of national barriers towards the introduction of a single, unified market) and 'positive' integration (i.e. the implementation of common or Community co-ordinated policies). These two aspects are inextricably linked in the sense that where national governments pursue policies, negative integration will always have to be closely followed by more or less far-reaching forms of positive integration. When (as at present) negative and positive integration are inadequately co-ordinated, integration 'deficits' arise that disrupt the functioning of the common market and limit the effectiveness of official policies (both communal and national) within the Community.

Deficits also arise in relation to national policies outside the *acquis* or actual areas of integration. The marked increase in government responsibilities over the past thirty years and the associated rise in the level of government intervention have brought the problem of co-ordination into the focus of attention, both with respect to interventions by the Member States and as regards the macro-economic and monetary policies complementing the introduction of the common market. This problem has been accentuated by the successive enlargements of the Community. With the greater number of national administrations intervening in the unfinished common market, the risk increases that the results of market processes and the effects of national government policies will cut across one another, with losses in effectiveness at both Community and national level.

This report has sought to identify solutions that are consistent with the particular nature of individual areas of policy and also politically realistic and feasible. The complexity of the phenomenon of uncompleted integration renders it pointless to look for single, all-embracing solutions. Thus progress may be made in some areas by delegating greater powers from the Council of Ministers to the European Commission, while in others closer co-operation between Member States will be the most feasible course. Solutions along the lines of 'differentiation', 'differentiated integration' and a 'two-tier' Community, which could in certain circumstances contribute towards the completion of the process of integration, need similarly to be viewed in this light. The conditions under which solutions of this kind would be

acceptable are spelled out in the relevant sections.

Chapter 2 examines the possibilities and margins for solutions to the problem. It is noted that the views in the Member States on the ultimate objectives of the integration process diverge markedly and that their involvement in the process differs according to the extent to which the domestic economy is integrated into the common market. New Member States are, therefore, sometimes more cautious about progress towards integration than the older ones. This is possible provided the current achievements of the integration process are not undermined and the possibility is left open for these Member States initially lagging behind to catch up at a later stage. The chapter also examines limitations connected with the origins, composition and institutional structure of the Community, and concludes with a review of the theoretical possibilities for reducing the co-ordination deficits noted in chapter 1, given the margins within which the integration process has to take place.

The problem of the unfinished integration has been tackled in relation to two main aspects: the market for industrial products (and, in conjunction with this, the market for services) and the market for agricultural products. This choice has been prompted by the experience gained in these fields in the integration process and by the central place that these subjects occupy in the problem of European integration and their importance for the Netherlands.

Chapter 3 examines the problem of unfinished integration in relation to these two areas. The importance is stressed of achieving a large, homogeneous home market for industrial products for Western Europe as a whole and for the Netherlands in particular. A summary of the major obstacles to this process is followed by a brief account of the differences in industrial strategy in the Member States and the obstacles arising as a result. Agricultural policy is discussed in terms of three problems: surpluses and the associated financing problems; marginal areas; and environmental problems. In these respects it is evident that the necessary reorientation of the CAP must take the situation as it has evolved as its starting point, both for Western Europe in general and the Netherlands in particular. The divergent views in the Member States about the future of the CAP indicate, however, that such a reorientation will not be an easy matter.

Chapters 4 and 5 discuss strategies for dealing with the problem of the common market for industrial products and that for agricultural products. Finally a number of institutional aspects are examined in *chapter 6*.

The principal conclusions and recommendations are outlined below.

2. THE COMMON MARKET FOR INDUSTRIAL PRODUCTS

In chapter 4, the WRR reaches the following conclusions:

a. The Commission's ideas in its White Paper of 1985 on the completion of the internal market are substantively consistent. The Commission devotes too little attention, however, to the implications of rapid completion of the internal market for the geographical distribution of economic activities within the Community and to the consequences this would have for national powers. With respect to certain important aspects – such as fiscal approximation – second or third-best solutions will probably have to suffice, such as permitting the differentiation (i.e. different speeds) of integration, and leaving certain powers with the Member States.
b. The timely implementation of the measures required for the further realization of the internal market and effective management of the integration achieved to date require abandonment of the unanimity principle in decision-making by the Council of Ministers and comprehensive delegation of regulative executive powers to the Commission.
c. The internal market for industrial products will be unable to function properly until freedom of establishment and free movement of services

within the Community have been brought about. Particular attention needs to be paid in this respect to a (liberalizing) common transport policy.

d. An internal market for industrial products will require the further unification of the common commercial policy, the strengthening and broadening of the common competition policy, and improved co-ordination by the Member States of their national industrial policies. Such developments need to be set in the framework of stricter co-ordination by the Member States of their macro-economic and monetary policies.

In the light of these conclusions the WRR makes the following recommendations:

2.1 Freedom of movement

a. *Technical and administrative trade barriers*

The necessary steps towards harmonization should be confined to laying down basic qualitative norms. With respect to regulations outside the field of safety, health and the environment, the reciprocal recognition of national standards, based on minimum qualitative standards at Community level, will suffice. Decisions by the Council of Ministers should be confined to broad political directives, with the harmonization of national regulations being delegated to a greater extent to the European Commission. The Commission should as such be accorded greater supervisory powers with respect to the enforcement of Community regulations at national level.

b. *Fiscal barriers*

Second-best solutions in the form of differentiation in time will have to be accepted here; longer transitional periods will be required, especially for the more recent members of the Community. Differentiation need not, however, extend to all harmonization proposals by the Commission. The Member States that have introduced VAT systems could, for example, all be subjected to the standstill principle with respect to the structure and level of taxes.

c. *Exchange controls*

It is not possible for the existing exchange restrictions to be lifted within the present structure of powers within the EC. The initiative will need to be taken primarily by the Member States themselves. The mutual co-ordination of macro-economic and monetary policies can be encouraged but not enforced by the Community.

d. *Commercial policy restrictions*

If priority is to be assigned to the completion of the internal market, the Community will not be permitted to introduce any further commercial policy measures the nature or content of which would interfere with that process. In addition the common commercial policy will have to be expanded to take new forms, such as the so-called technical co-operation agreements with Eastern bloc countries. Greater efforts will have to be made to ensure that the substance of agreements with third countries is not at variance with Community interests, such as the unity of the internal market. The elimination of commercial policy restrictions in intra-Community traffic will require greater executive centralization of the *de jure* powers already possessed by the Community. The completion of the internal market will require greater restraint on the part of the Commission in applying the safeguard provisions under Article 115 EEC. A certain amount of differentiation over time for the new Member States will, however, be difficult to avoid.

e. *Public procurement*

The enhancement of market transparency requires the comprehensive harmonization of national regulations on government purchases and contracts. The Commission needs greater supervisory powers over the activities of national bodies, while national policies in the field of public procurement should be more closely tied to the Community's substantive anti-discrimination provisions. There is no scope for policy differentiation in this field.

f. *Barriers to the movement of services*

Banking and insurance services need to be liberalized by the reciprocal recognition of national standards for the admission and operating procedures of such institutions and the mutual recognition of national administrative controls over their policies. In the case of the liberal professions, national restrictions on the right of establishment should be eliminated. Disparities in national legislation with respect to cross-border traffic in information-technology services should be avoided.

g. *The common transport market*

Given the differences in national attitudes, the proposed solutions are necessarily limited in nature. The common transport policy will be more concerned with standardizing the qualitative and financial framework than with influencing the range of transport facilities in a quantitative sense. In view of the fact that intensive market regulation of transport would over-tax the policy and decision-making capacity of the Community, far-reaching liberalization is the obvious choice.

2.2 Supporting Community policies

In this area the WRR reaches the following conclusions:

a. With respect to the various forms of secondary support policies – the common commercial policy, competition policy and industrial and technology policy – the completion of the internal market will generally require either the further communalization of policies hitherto conducted at national level or stricter co-ordination by the Community of national action. Each further stage towards the completion of the internal market will impose more stringent legal limitations on national intervention or will render such intervention ineffective.
b. Even the minimally required second or third-best solutions most acceptable to the Member States will require considerable shifts in the structure of powers within the Community. The resultant policy-making burden will again require the abandonment of the unanimity principle in the Council and the comprehensive delegation of powers to the Commission.

On the basis of these considerations, the following recommendations are made:

2.2.1 *Commercial policy*

a. Community commercial policy will need to respect the liberalizing commitments undertaken under the GATT and to exert pressure on third countries to observe those commitments. In this respect the so-called new commercial policy instrument of the European Commission can be used to further leading industrial policy objectives.
b. In view of the fact that the frequent resort to anti-dumping and anti-subsidy regulations can lead to a highly complex, unfathomable set of import tariffs and restrictions, the Community will have to exercise restraint, especially with respect to third country signatories to the GATT.

c. The further communalization of commercial policy does not lend itself to differentiated application.

2.2.2 *Competition policy*

a. As progress is made towards completing the internal market for industrial products, services and factors of production and a common commercial policy, the harmonization and reduction of official regulation will have to go hand in hand as the common commercial policy is extended. The solution here lies in the stricter exercise of powers which the Community in fact already possesses but which it has not so far exploited adequately.
b. Restraint should be exercised with respect to introducing quantitative restrictions on the right of establishment at national level.
c. Stricter application of the state aids prohibition is required with respect to specific distortions. Apart from a few transparent constructions, national state aids should be declared incompatible with the provisions of the EEC Treaty. The Commission could ease its supervisory burden by attaching a maximum period to each exception that it approves. Greater attention needs to be paid to creating a Community policy framework in which national state aids notified to the Commission could be appraised and incorporated.
d. Integration, when the Community assumes the policies and policy instruments of the Member States, is advisable only where the policies in question can be conducted at Community level alone (e.g. certain aspects of technology policy).
e. The Community and the Member States will need to devise a medium-term legislative strategy directed towards the co-existence of Community and national legislative powers in the same areas of policy. (The three elements that such a strategy would need to cover are discussed in section 4.3.3.4.)

2.2.3 *Industrial and technological policy*

a. In improving the physical, technological and scientific infrastructure, collaboration between the Member States most directly concerned can lead to limited solutions, which the remaining Member States can join at a later stage. The Commission's main task in this area will be a supervisory one.
b. The services of national technological and scientific research institutions should be available to enterprises throughout the Community on the same conditions.
c. The Community will itself need to encourage the establishment of leading research centres, e.g. by the provision of finance. Collaborative arrangements between European universities should also be encouraged.
d. The Community agencies should develop a common science policy, with responsibility for overall management being assigned to an independent body at Community level.
e. The success of the Community programmes (Esprit, Brite and Race) in stimulating technological innovation in industry deserves to be built upon. The Council of Ministers will need to confine itself to the overall determination of the general objectives and resources of the various programmes. Organizationally, the Commission should make the industrial programmes self-reliant in a managerial sense and make provision for the input of independent experts in decision-making.
f. Government support for the research and development of new technologies and products should be assessed equally as critically as other forms of state aid. In both quantitative and qualitative terms, the Council and Commission could narrow the margins for offensive national state aids. Co-operation between the Community and the Member States in 'large' projects would be building on the start made by Esprit, Brite and Race.

g. The EEC Treaty and Community law permit collaboration between two or more Member States to stimulate technological developments (such as Eureka, Cern and Airbus) provided these projects are opened up to enterprises throughout the Community and non-participating Member States can affiliate themselves to the project.
h. It is most important that the wave of legislation which developments in the field of information theory are likely to stimulate should be guided into Community channels.
i. By way of support for industrial policy, new approaches will have to be devised at Community level toward, among other things, the formulation and elaboration of regulations for goods and services; the operation of the money and capital markets; the protection of the environment against adverse external effects of production and consumption; and aspects of company law.
j. Innovation needs to be encouraged in the private sector. Most of the relevant powers are at national level, and the Community's role can be confined to advice and information. Governments can promote the introduction of new products and services by the timely provision of appropriate physical infrastructure, hardware, service facilities and information activities, and by setting competitive charges.

3. THE COMMON AGRICULTURAL POLICY

The CAP is examined in chapter 5 in relation to the problems faced by agriculture in the Community. It is argued that the current agricultural policy relies excessively on the price-fixing mechanism to achieve both market equilibrium and an acceptable level of income for the agricultural community. Taken together with technical progress, which means that increasing yields can be produced more and more cheaply, a large production surplus has been generated, which the all but stagnant level of demand in the Community holds out no hope of absorbing in the longer term. These surpluses have to be disposed of at great expense, partly on the world market, resulting not just in a waste of resources but also in major conflicts with other agricultural exporters.

In contrast to agricultural policy, agricultural structure policy has remained in national hands. The cost of national structure policies is, therefore, passed on to the Community, with no built-in incentives for restraint.

Following a discussion of the respective advantages and disadvantages of market-oriented policies and quantitative restrictions, it is argued that the scope for quota arrangements in the Community is subject to tight political constraints, and that such a system would in any case not solve the central problems of agricultural policy over the longer term. The Community's decision-making mechanism would be over-taxed and the integrated internal market placed in jeopardy.

As a solution, the WRR recommends a reorientation in the form of a more market-oriented agricultural policy, with a general reduction in prices towards world levels, together with the development and funding of new instruments to help the poorer agricultural areas in the Community. Only in this way can the unity of and freedom in the market be preserved while at the same time enabling agriculture to fulfil its functions in terms of countryside protection, nature conservation and environmental protection.

A reduction in agricultural intervention prices in line with or close to world levels would be justifiable for the central agricultural areas since the Community price level has so far been largely geared to producers operating under marginal conditions. A cut in prices on this scale would, however, need to take at least ten years for farmers to be able to adjust adequately to the changed circumstances. The resultant squeeze on rural incomes will necessarily lead to an accelerated decline in the number of farmers. With the continuing increase in yields per hectare and the decline in land prices and

rents, the cut in production will create room for other forms of land-use – for which the greatest demand exists in the central, densely-populated areas of Europe.

A drastic cut in prices would have unacceptable consequences for both the less prosperous agricultural areas with structural growth potential and the genuinely marginal areas lacking real prospects. This impact will have to be compensated for by a set of supporting measures. In areas with development potential, these measures could relate to improvements in land-use and associated infrastructural improvements, provided that this leads to enterprises that would remain viable under more market-oriented agricultural policies. This requirement calls for great restraint, particularly since every expansion in agricultural capacity will aggravate the adjustment problems in the central and traditionally more prosperous agricultural areas. In so far as expansion leads to a more balanced geographical distribution of production capacity within the Community this is, however, the price that will have to be paid for keeping the market open and preserving the development potential of agriculture in the central regions. In return for Community co-financing, the EC would need to exercise the powers it has to curb national support for agriculture by means of structural-improvement measures.

Broadly in line with the Commission's Green Paper, the following compensatory measures for genuinely marginal areas are proposed:

a. Safeguarding a certain productive capacity by means of a degressive subsidy per production unit for enterprises that have undertaken investment in the past and are potentially viable.
b. Buying-out regulations to enable marginal areas to be used for nature reserves, landscape parks, recreation areas, extensive grazing and forestry.
c. Regulations designed to keep lands in production for nature and countryside conservation. This would not be so much a matter of maintaining traditional agricultural practices (the capacity of which to achieve the aims in question is open to doubt) but of elaborating more specialized policies to stimulate the development of new methods to promote these enduring values.
d. The provision of incentives for the cultivation of crops that do not add seriously to the problem of surpluses. These might include agricultural products that cannot be produced under advanced technological conditions, such as 'craft' and 'natural' products.
e. Tapering individual income support to supplement national measures to compensate for the social impact of enforced farm closures.

These measures would be able to reduce the problems created for marginal areas by a more market-oriented policy but would be no more able to solve them than the current price policy. The problem should, accordingly, be dealt with in a broader framework than that of agricultural policy alone by the promotion of an economic structure that would totally or partially replace the traditional agricultural structure. Supplementary Community programmes to improve the infrastructure, for the training or re-training of the working population, and for the provision of the facilities required for the new sorts of activities would form important elements in such a strategy.

In order to smooth out excessive short-term fluctuations, a certain amount of buffering in the form of levies and restitutions at the external border would remain necessary under a more market-oriented policy. A buffered price level will, however, need to reflect the average world price so that the equilibrium between import levies and restitutions is not permanently disrupted, with all the consequences this would have for the Community budget and international relations.

In order to keep the internal market open for goods and services, the more prosperous Member States – including the Netherlands – have a particular interest in freeing the CAP from its present political isolation. The financial resources required for this purpose could largely come out of the

present EC budget. As it is, the cost of disposing of surpluses amounts to nearly 15 per cent of the value of agricultural production in the Community, whereas only 1.5 per cent of this contributes (through artificially high prices) to the maintenance of what are even so barely acceptable living standards in the marginal areas of the Community.

4. INSTITUTIONAL PROBLEMS

4.1 Community institutions

In section 1 of *chapter 6* the institutional problems of the Community are viewed as deriving from substantive issues. If the EC is to take the minimal steps required for completing the internal market and reforming the CAP, its decision-making capability will need to be substantially enhanced. This will mean that the unanimity principle for Council decision-making will have to be reviewed from area to area of policy and where appropriate abolished. In addition, policy powers will need to be delegated to the Commission on a much larger scale.

The proposals made along these lines in the Single Act of European Union would, if properly observed, effect some improvement, but would not fully satisfy the requirements for a minimal solution to the substantive problems.

In order to improve the democratic legitimation of Community policy, the European Parliament's supervisory powers over the Commission will need to be strengthened and expanded. As the Commission's powers increase - a not improbable development as progress is made towards finishing the internal market - the powers of the European Parliament will also carry greater substantive weight.

In a Community the political structure of which is characterized by tension between Community and national elements and which is consequently weak, the Court of Justice fulfils a key role. Progress towards integration requires strict respect on the part of the Member States for the Community legal order. It is therefore desirable for national legislatures to be kept systematically up to date with the jurisprudence of the Court of Justice, if possible with reasoned explanations of operative and draft legislation and regulations.

The Commission will have to approach the enforcement of Community law more systematically in terms of policy area, policy interest, anticipated (lack of) policy conformity and the consequences for the unity and functioning of the common market. There would be merit in giving the Commission the general powers to dispense with the preliminary administrative stage and to appeal directly in the Court of Justice against national actions manifestly at variance with Community law.

4.2 The unfinished integration and the Netherlands

In section 6.2 a distinction is drawn between Dutch policy towards and within the Community.

With respect to Dutch policy *towards* the Community, the following links need to be borne in mind:

a. The link between positive and negative integration. Each step towards finishing the internal market involves a derogation from national capacity to act and therefore raises the question of the extent to which these losses need to be compensated for at Community level.
b. The link between substantive and institutional problems. The further completion of the internal market and the re-orientation of the CAP render an enlargement of the policy-forming and executive capacity of the Community essential, even if solutions are explored under which the allocation of powers between the Community and the Member States is changed as little as possible.

c. The link between the finishing of the internal market for industrial products and that for services and the reorientation of the CAP. In view of the divergent interests in the Member States in the markets for industrial products and services, the aim should be for the simultaneous realization of the internal market for both sectors. A liberalizing Community transport policy should be vigorously pursued. Because the prosperous industrial and agricultural areas often coincide or are in close location, particular account will have to be taken in any reform of the CAP of the poorer, generally peripheral areas. This means that in the Netherlands, too, the interests of industry, services (including transport) and agriculture will need to be approached as a cohesive whole.

The further completion of the internal market will have radical consequences in all sorts of areas for policies hitherto conducted at national level *within* the Community. To date, the various elements of the Dutch government would appear insufficiently aware of the implications of the Community as a 'fourth estate'. Most ministerial departments lack the necessary expertise and tend to concentrate excessively on their own policy setting (i.e. intra- and inter-departmental consultations, contacts with representative organizations, consultations with the relevant standing Parliamentary committee). It would therefore be desirable for a review to be conducted of the policy implications for each area of government likely to be affected by the on-going process of integration. Such a survey could be compiled under the auspices of the co-ordinating committee for European Affairs (the departmental preparatory committee for the Cabinet sub-committee on European affairs), drawing as necessary on outside experts.

At the national political level the setting up of a Standing Parliamentary Committee on EC Affairs could have a beneficial effect on policy cohesion within the Community if it managed to encourage other Standing Parliamentary Committees concerned with policies in the specialist departments to take a more active interest in the Community context. As regards Dutch policy towards the Community, supervision of the dealings of Dutch ministers in Community agencies should remain confined to assessing their overall consistency. As the Danish example has shown, being strictly tied to Parliamentary decisions leads to immobility and deadlock: Dutch parliamentary democracy will have to acknowledge and accept its essential commitment to the Community framework.

Conflict and co-operation have always been elements in international relations. Since the second half of the nineteenth century, co-operation has increasingly found expression in inter-governmental organizations. These institutionalized forms of international co-operation are used in an attempt to find solutions to problems and hence to prevent those problems from leading ultimately to the use of violence. These efforts resumed with a marked impetus after the Second World War, when the widespread devastation and the loss of human life produced a resurgence of interest in international co-operation.

After three major wars in a single human lifespan, the desire to secure peace between old hereditary enemies acted as a significant source of inspiration in Western Europe. The notion of promoting reconstruction through European integration and thus contributing towards the economic and social health of the region acted as complement to that desire.

At stake was more than simple co-operation between sovereign states: after the Second World War the aim of a federal Europe (the 'United States of Europe') took on a new form. The names of political leaders such as Monnet, Adenauer, De Gasperi, Schuman, Spaak and Beyen are associated with a fundamentally new construct, namely the 'integration model'. Designed as it was to achieve such a degree of integration of the individual national economies as to bring about a new 'European' economic arena, this approach was based on the principle that the creation of a single major European market would automatically bring about political integration (or what was known as 'spill-over'). This would not merely be to the benefit of the economies themselves but would also produce political co-ordination since differences of interest that had in the past led to conflict would now be resolved within the new framework.

The integration concept underlay the establishment of three primarily economic organizations, namely the European Coal and Steel Community (1952), the European Atomic Energy Community and the European Economic Community (both 1958). These produced the Europe of the Six, later the Nine, the Ten and now the Twelve. While the European Community (a term used to refer to the merged institutions of these three communities) may not be a federation, it is at the same time certainly more than a classic international organization (and is as such sometimes referred to as a 'pre-federal' association of states).

To anticipate the analysis contained in this report, it may be noted at this point that the process of integration in Western Europe has followed a clearly different path from that assumed in the 1950s. The expectation that market integration would automatically lead to policy and political integration has not been borne out. Indeed, the converse would if anything appear more true: more far-reaching policy integration will have to create and sustain the conditions in which market integration can take place. Improving the link between policy and market integration, however, confronts the Member States with acute political dilemmas, not always confined to the Community itself.

Since the early 1970s, the stagnation in the process of European integration has formed the subject of attention in the many reports and studies that have been produced on the unfinished European integration. In the Netherlands, for example, the first report to be submitted to the government by the Provisional Scientific Council for Government Policy (WRR) in 1974 helped prompt the establishment of an Advisory Committee on European

Integration chaired by Ambassador D.P. Spierenburg. In its report issued on 1 May 1975, the Spierenburg Committee followed the line of thought leading to a European (Economic) Union through to its logical conclusions [1]. The Spierenburg report remains one of the best thought-out studies on European integration but, like many other studies, it tackles the problem mainly from a Community viewpoint as a Community problem. However valuable it may be, this approach is, in the WRR's view, too one-sided. In particular, it fails to acknowledge that the unfinished state of economic integration also constitutes a threat to *national* policies, and to the values and interests preserved by those policies. Particularly given the present far-reaching structural changes in the world, the problem of European integration is also of vital importance from a national viewpoint.

Economic and social developments in the Netherlands are radically affected by the process of European integration. The course of this process helps determine the scope for realizing deeply entrenched aspirations within our society, such as balanced economic growth, a sufficient level of employment to absorb the supply of labour, and social security and justice. Although these and similar objectives tend to be presented as national objectives, they in fact no longer are. Even in its present unfinished state, the process of integration sets the margins within which Dutch government policy can operate effectively. Outside the area of socio-economic policy, too, the freedom of action of the Dutch government is constrained and affected both legally and, above all, in practical terms by this process.

On the other hand, the Dutch state is an actor which - if to a lesser extent than in the past - can help affect the current political decision-making process on the course and shape of European integration. The fact that this integration process at present stands in need of significant re-orientation renders it necessary in the Council's view to make a corresponding re-assessment of the Dutch position.

The arrangement of this report is as follows.
Chapter 1 defines the problems and provides a conceptual framework for the process of economic integration taking place within the Community. Chapter 2 sets out the practical and theoretical options for solving the problems with which the integration process is currently contending. In chapter 3 the unfinished process of integration is examined in greater detail in relation to two areas of policy, namely the internal market for industrial goods and the market for agricultural products. Chapters 4 and 5 discuss strategies for the further completion of the internal market and the reorientation of the Common Agricultural Policy. Finally chapter 6 briefly examines the Community's institutional problems, as deriving from the problem of substantive policy co-ordination, concluding with an examination of the position of the Netherlands towards and within the Community.

This report centres particularly on the completion of the internal market for industrial products and on the Common Agricultural Policy. This choice rests primarily on pragmatic grounds, since it is in these areas that the process of integration is the most advanced and on which there is most material. With respect to the current interest in completing the internal market for industrial products and in industrial policy, it should, however, be borne in mind that, in terms of value added, employment opportunities and growth prospects, the services sector has greatly over-shadowed the industrial sector in most of the Member States, and that there are clear interconnections between the new technologies and the services sector [2]. The problem of the internal market for services is therefore repeatedly touched on in chapter 4. This is made easier by the fact that the issues arising in relation to

---

[1] Netherlands Scientific Council for Government Policy, *Europese Unie* (European Union), Report to the Government no. 1, The Hague, Staatsuitgeverij, 1974.
Europese Unie, Report by the Advisory Committee on European Union, The Hague, 1975.

[2] See the relevant statistics published in *Europa van Morgen* of 22 January 1986, p. 28.

the realization of the internal market for services are closely analogous to those encountered in the internal market for industrial products.

1. THE PROBLEM OF UNFINISHED INTEGRATION

1.1 Definition of the problem

The history of nearly thirty years of European integration has been marked by a growing tension between the demands imposed by the introduction and maintenance of the Common Market and the advent of the modern national welfare state. In substantive terms, this tension means that the Common Market as envisaged under the EEC Treaty and now partly in place, imposes growing practical and legal constraints on the ability of the member states to regulate and intervene in markets; conversely, the growing range and intensity of market intervention by the member states since 1958 pose increasingly serious obstacles to the unity and effective operation of the Common Market.

This problem exists at a time when an effectively operating common market is becoming a steadily more important factor for European industry in adjusting to the rapid and profound changes in the world market. These are brought about most notably by the emergence of new industrial states in South-East Asia and Latin America, the intensified competition from the United States and Japan and the dissemination of new technologies. These developments represent a challenge and, potentially, a threat to the policies which the Member States and the Community are required to pursue. In bald terms it demands the rapid completion of a common market in which the necessary public intervention can be effectively carried out.

The tension between (i) the pre-conditions for instituting an effective common market and (ii) national policies stems from two closely related causes.

1. The EEC Treaty opted for a system of *negative* (market) integration and related *positive* (policy) integration. In other words, the system provides for permanent legal limitations on the use of national policy instruments that obstruct the working of the free market in the Community (i.e. negative integration) coupled with forms of harmonization and co-ordination of legislation and policy at Community initiative and under Community supervision and, not uncommonly, the transfer of significant national powers to the Community (i.e. positive integration). The latter path has in practice proved increasingly thorny. When the Treaty was drafted, there was insufficient acknowledgement of the fundamental differences between negative and positive integration, and the Treaty has proved incapable of preserving the necessary cohesion between these two forms. This flaw became evident at an early stage and has never been remedied.
2. Subsequent developments have obstructed the necessary co-ordination between market and policy integration. These include:

a. positive integration pre-supposes a decision-making capacity at Community level commensurate with the scale of such integration. From the outset, however, that capacity was inadequate, and has been steadily cut back since 1966 by the Luxemburg Agreement and the repeated enlargement of the Community;

b. the lack of economic growth since the early 1970s and the global structural changes affecting the West European economies in the process of integration set limits on the financial scope for policy integration at Community level, while at the same time leading at national level to more unco-ordinated interventionist action by individual national governments, with a necessarily disruptive effect on the common market;

c. enlargement (i.e. the accession of the United Kingdom, Ireland, Denmark, Greece, Spain and Portugal) has made the Community more heterogeneous in an economic, social and political sense. In practical terms, the greater differences in economic structure and living standards have made it more difficult to achieve policy integration, while the divergent views on the role of government in relation to the market have rendered it more difficult to achieve the consensus required for policy integration;

d. since 1958 the role of government in the economic order has grown in significance both quantitatively and qualitatively. This in turn has increased the scope of policy integration, an expansion coupled with limitations on national governments' freedom of action at Community level in the light of the increasing attention they have been obliged to pay to the national interests at stake with their policies.

Although this development has stagnated in most of the Member States since the beginning of the 1980s, there remains a substantial demand in society for government intervention in all sorts of areas.

The problem of the unfinished European integration therefore has various (if related) causes. In part these stem from the structure of the Community itself, such as the institutional structure of responsibilities and the allocation of financial powers. In part they are attributable to the growth in national government since the late 1950s, and in part to such factors as the increased diversity of the Community, the destabilization of the world financial and commodity markets, and the stagnation in economic growth. The multiplicity of causal factors calls for a range of (where possible) mutually reinforcing solutions. It is questionable whether the problems under discussion in this report can in fact be resolved under the EEC Treaty as it stands and is currently applied. At the same time, however, it is also questionable whether the restoration of cohesion between market and policy integration always stands in need of Community measures bearing equally on all Member States at the same time, or whether more differentiated measures might not afford a better solution in certain instances. These issues are examined in more detail in chapters 3-5.

1.2 Negative and positive integration: integration deficits

1.2.1 *Linkage between negative and positive integration*

Introducing and assuring the effective operation of a common market require limitations on the national states with respect to the use of policy instruments affecting the cross-frontier allocation of goods and services and factors of production. As such the EEC Treaty imposes a wide range of prohibitions on the interventions of Member States in cross-frontier traffic. These prohibitions have great practical and legal significance since the EC Court of Justice has declared them to be of direct application and tends to interpret their scope broadly [1]. The first of these means that private individuals and enterprises are able to institute legal proceedings in their own country on the basis of these provisions (i.e. the prohibitions bearing on the Member States create legal entitlements for their citizens). As a result, EC regulations acquire a high measure of effectiveness in terms of national administration: as far as national bodies are concerned, no longer being *permitted* means no longer being *able*. The second means that the legal restrictions imposed on national powers often extend well beyond what an initial

[1] At issue *inter alia* are Articles 7, 12, 30-34, 37, 48, 52, 59, 85, 86, 95, 96 and 119 of the EEC Treaty.

reading of the EEC Treaty might suggest [2]. For market subjects, the prohibitions directed towards the national government create the conditions for cross-frontier *negative* integration.

The elimination of national powers alone is not, however, sufficient for the establishment of a common market. If it is desired to maintain a particular policy, as national governments are currently doing in order to correct imperfections in the market, market integration will in many cases need to be buttressed by a more or less far-reaching form of *positive* integration, the most characteristic and spectacular example being the Common Agricultural Policy. (To avoid any ambiguity, it should be stressed that the concepts of 'positive' and 'negative' are used here in a neutral sense: positive integration is not better, and negative integration not worse.)

It is possible for the integration of a system of complete freedom of movement in which government action is confined to responsibility for public order and national security to be achieved largely by means of negative integration. History affords examples where this method of integration ultimately led to the complete unification of previously separate markets. Such instances, however, all precede the advent of the modern state, with its wide-ranging intervention in economic activity. As the degree of intervention by national governments increases in terms of scope, frequency and intensity, every form of negative, liberalising integration needs to be accompanied by more comprehensive, positive (policy) integration if adequate government policies are to be maintained. This latter method of integration should follow the former closely. In achieving the integration of mixed economies, both forms of integration are, in brief, inextricably interwoven.

Where this link is not sufficiently established and positive and negative integration are insufficiently co-ordinated - as has been, and continues increasingly, to be the case in the process of European economic integration - *integration deficits* arise.

These deficits disturb the operation of the common market and limit the effectiveness of intra-Community government policies. The completion of negative integration requires the elimination of existing integration deficits, or in other words the restoration of congruence between negative and positive integration.

In order to obtain an impression of the nature and scale of the integration deficits displayed by the common market as it stands, the course taken by the process of negative integration is set out in table 1. The table is based on the work of the American economist Balassa as specially elaborated for the Community process of integration by the Dutch researcher Pelkmans [3].

---

[2] An examination of the Court of Justice's rulings on Articles 12 ff. and, above all, Article 30 of the EEC Treaty reveals just how far-reaching the limitations on national policy arising under the Treaty can be.
Cf. C.W.A. Timmermans, 'The free movement of goods', in: *Thirty years of Community law*, European Perspectives Collection, Luxembourg, 1983, pp. 237-284.

[3] J. Pelkmans, 'The Institutional Economics of European Integration', in *Integration through law - Europe and the American Federal Experience*, edited by M. Capeletti, J. Weiler and M. Seccombe, Vol. I, Book I, New York/Berlin, Walther de Gruyter, 1985.

Table 1 Economic integration in eight stages

Stage	Name	Negative integration	Positive integration
1.	pure tariff union	1. **abolition of tariffs and quotas *in intra-Community trade in* goods** (a) 2. abolition of quotas in intra-Community trade in services 3. **abolition of tariffs on exports** 4. **freedom of payments for liberalized intra-Community trade with exception of safeguard clauses**	3. **common external tariffs**
2.	tariff union-plus (b)	5. abolition of autonomous national customs rules 6. **limitation of safeguard clauses and abolition of escape clauses on intra-Community trade**	5. approximation of legislative and administrative provision in customs field 6. **Community supervision of safeguard clauses** 7. **adjustment support** (Social Fund)
3.	pseudo customs union	8. *abolition of national non-tariff barriers towards third countries* 9. *limitation/abolition of internal non-tariff barriers* (safety and health regulations, etc.) (c) 10. *abolition of discriminatory transport regulations* 11. abolition of restrictions on private services (except banking)	8. common commercial policy 9. *harmonization of technical standards etc./unified standards* 11. harmonization of legislation on private services (insurance)
4.	fiscal and limited financial union	12. *abolition of exchange controls and minimization of financial safeguard clauses on commercial payments* 14. partial abolition of indirect taxes other than VAT and excise for national reasons	12. a. Community supervision b. **Community borrowing facilities for Member States in difficulties** 13. **approximation of indirect taxation systems (single VAT system)** 14. approximation of the taxable categories for indirect taxes other than VAT and excise 15. convergence of tariffs for indirect taxes and excise
5.	pure customs union	16. *abolition of autonomous sector regulations* 17. *limitation autonomous sector funds* 18. *limitation of autonomous aid to industry and of discriminatory government procurement; surveillance financial structure of public enterprises* 20. *limitation of autonomous regional policy*	16. a. **common agric. policy** b. **common fisheries policy** c. common transport policy d. **common steel policy** e. common environmental policy f. common energy policy g. common policies on other sectors 17. *common sectoral funds* 18. *common state aid policy for industry* 19. **common competition policy for enterprises** (d) 20. a. *harmonization of regional policy* b. **common regional fund**

Table 1 Economic integration in eight stages, continued

Stage	Name	Negative integration	Positive integration
6.	customs union-plus	21. **abolition of restrictions on intra-Community direct investment**	
7.	pseudo common market	22. **freedom of establishment**	22. *harmonization of legislation*
		23. *abolition of restrictions on employees and the self-employed* (e)	23. *harmonization of labour laws* 24. harmonization of merger legislation
8.	pure common market	25. *abolition of restrictions on trans-frontier banking services*	25. *harmonization of legislation and administrative procedures on banking system*
		26. abolition of restrictions on security markets	26. Community surveillance of security markets

(a) This does not apply to textiles and clothing coming under the Multi-Fibre Arrangement. Bilateral agreements with third countries are divided up under the intra-EC quota. Nor, on account of the existence of monetary compensation amounts, does it apply to agricultural products. Where MCAs are levied they may be equated in terms of consequences with customs duties. The European Court of Justice confirmed the compatibility of MCAs with the principles of the free movement of goods in 1973 (Rewe Zentral/HZA Kehl) [4].

(b) The tariff union-plus provides certainty for the inward and outward clearance of intra-Community trade. By inward clearance is meant the fact that when importers have discharged their obligations (i.e. payment of duties and completion of customs formalities) and if no quantitative restrictions apply, the goods in question may move freely within the Community.

(c) Numerous restrictions continue to exist, e.g. the phytosanitary requirements for agricultural goods and the *de facto* import restrictions on industrial products arising from the varying national interpretations of standards by the Member States.

(d) The common competition policy is applied marginally to services, and not at all to transport and telecommunications. In addition there are block exemptions (e.g. exclusive distribution rights in the motor vehicle industry, collaboration between enterprises in joint research such as the Esprit programme, and the sale of licences).

(e) Exceptions apply to employment in public administration and where limitations are justified by reasons of public order, public safety and public health.

The table sets out eight stages of integration that must be passed through before a common market can be said to be 'completed'. Each of these stages comprises a complete phase of market integration, while each succeeding stage embraces the succeeding stage or stages. For each stage the subsequent steps are defined that need to be taken in order to reach the required level of negative and positive integration for that stage. These steps are shown in the chart in simplified form, sub-divided into negative and positive integration. The corresponding negative and positive integration steps required in order to complete a certain level of market integration have been given the same number. Completed steps are shown in bold type, and uncompleted steps in italics.

The eight stages are as follows:

- *Pure tariff union* (stage 1). During this stage inter-state commercial traffic is free of customs duties and any quantitative restrictions. Trade with third countries is subject to a common customs tariff.
- *Tariff union-plus* (stage 2) involves the abolition or limitation of barriers to inter-state traffic arising from differences in national customs procedures and uncontrolled resort to safeguard clauses on intra-Community trade. It aims to provide actors in the market with (minimal) certainty on their trans-frontier transactions.
- The *pseudo-customs union* (stage 3) goes a step further in that it also entails the abolition of national non-tariff and non-fiscal barriers.
- The *fiscal and limited financial union* (stage 4) entails the elimination of the obstacles to inter-state commercial traffic arising from the imposition of national indirect taxes and from the application of national currency restrictions and controls.
- In the *pure customs union* (stage 5), integration of the goods market is achieved because national interventions that indirectly affect the flow of goods (state aids or specific national sector regulations) are either conducted or co-ordinated at Community level.

[4] CJEC, 24 October 1973, 10/73, *Rewe-Zentral AG v. Hauptzollamt Kehl*, ECR (1973), 1175.

- The *customs union plus* (stage 6) involves further integration of the goods market and establishes the conditions for unrestricted direct investment throughout the Community.
- In the *pseudo-common market* (stage 7) restrictions on the free intra-Community movement of all non-financial factors of production are abolished (i.e. free movement of workers and free right of establishment).
- The *common market* (stage 8) is completed with the abolition of restrictions on capital movements.

Stages 1 to 5 indicate the phases that have to be completed in order to achieve a customs union. Stages 6 to 8 set out the phases and associated measures that are required in order to move from a customs union to a common market. If the steps in each stage have been carried out, there would be freedom of movement for products (i.e. goods and services) and factors of production: government intervention in the market would either be carried out or be co-ordinated and supervised at Community level. Any differences in government policy within the common market would arise solely from common decision-making. The European Community has by no means reached this stage.

It may readily be seen from the table that the process of negative integration remains unfinished and in fact that none of the relevant stages have been rounded off. It is notable that in certain of the stages, none of the measures needed for achieving the positive and negative integration required have been taken. Quite commonly there is a lack of co-ordination between the two kinds of measures. In particular, measures designed to bring about the required positive integration at a given level of liberalization have been neglected. Both situations display integration deficits.

The degree of integration that has been achieved also displays notable substantive variations within the various phases. The negative integration for goods is, for example, a good deal further completed than that for factors of production. Even the integration of the market for goods, however, is far from complete; the positive integration corresponding to the negative integration was not completed during the first four stages and continues to display major gaps in the fifth stage. Thus discriminatory forms of national government intervention that disrupt the functioning of the common market remain widespread, for example in sectoral policy (both defensive and offensive), functional policy and regional policy. The only cases where this is not so is competition policy (with respect to actions by enterprises to restrict or distort competition), where Community policy has largely replaced national policies; agricultural policy; and - much less effectively - steel industry policy.

There follows a list of important integration deficits during stages 1 to 5 with a highly adverse effect on the effectiveness of the customs union:

a. Inadequate unification and harmonization of formal customs law and pronounced differences in the attitudes and procedures of the national customs authorities (stage 2). In practice, cross-frontier goods traffic is not free. The many formalities and checks at frontiers continue to cause tiresome and expensive delays. In part these formalities stem from the application of national fiscal and administrative measures and checks (such as VAT adjustment, the collection of statistical data, health checks and inspections), the imposition of which stands in need of policy-integrating steps in stages 3 and 4. To a significant extent, however, frontier frustrations are due to an omission in the EEC Treaty itself, which is not sufficiently explicit on the unification of formal customs law and customs administration and which assigned the Community insufficient powers to take the necessary steps [5].
b. The shortcomings of the common commercial policy (stage 3), as a result of which there is excessive reliance on and an overly liberal application of Article 115 of the Treaty. For certain products, resort to this safeguard provision has resulted in the virtual absence of free internal traffic.
c. The incomplete abolition of non-traffic and non-fiscal frontier barriers (stage 3), and even an increase in their number and scope. Even within

[5] See Articles 17, 28 and 235 EEC.

the margins left to national legislatures under the EEC Treaty and the Court of Justice's interpretation of Article 30 and 36 EEC, substantive differences in national regulations for products form serious and costly obstacles to inter-state commercial traffic. In the case of certain products these regulations virtually seal off access to the domestic market and act as quantitative/protectionist restrictions. Although the Treaty provides for varying special provisions and establishes a common legal basis (Article 100 EEC) for eliminating disparities between national legislative provisions by means of harmonization or co-ordination Directives, the results achieved lag far behind the practical requirements. Progress towards market unity is therefore exposed to a permanent risk of re-fragmentation.

d. The barriers to the increasingly important movement of services have been eliminated only in part. Particularly in respect of the economically important 'new' forms of services – such as data communication, storage and processing – the internal market is by no means completed. This means that 'technological Europe' lacks an essential basis.
e. There is still no common transport policy (stages 3 and 5). The free movement of goods is consequently not linked to a complementary freedom of goods transport, and national frontiers continue to affect the level of transport costs (sometimes decisively). There can, therefore, be no suggestion of an optimal allocation of goods within the common market.
f. The incomplete abolition of currency and capital export controls (stage 4). These arise from a generous application of the financial and monetary safeguard clauses in the EEC Treaty and – although this is at variance with the decisions handed down by the Court of Justice – the practice of permitting such exemptions to run on once granted.
g. Frontier controls associated with the continued existence of fiscal barriers (stage 4). Given the current state of approximation of value-added tax and excise, extensive frontier formalities are required for the movement of goods from one national taxation area to another. Approximation of the taxation base and, within certain margins, tax rates form the pre-conditions for the introduction of a regulation permitting importers to pay indirect taxes (retrospectively, periodically and cumulatively).
h. Obstacles to inter-state commerce in agricultural products resulting from the levying of monetary compensation amounts. Indirect obstacles to such traffic are caused by the quotas imposed under the CAP (stage 5).
i. The disruptions to and obstacles towards inter-state commercial traffic stemming from national industrial policies (stage 5). Both negative and positive integration are inadequate to protect the common market against such disruption.
j. The inadequacy of competition policy with respect to governmental and semi-governmental activities (stage 5). Weak spots here are opposition to the practice of state aid to industry (although the Commission has been taking a tougher stance since 1980), the opening up of markets in which national governments are important parties, and the correction of practices serving to distort competition on the part of government enterprises.

The White Paper issued by the Commission on the completion of the internal market provides a detailed survey of remaining deficits[6]. These could be incorporated without undue difficulty into the ouline summary shown below.

---

[6] Commission of the European Communities, *Completing the Internal Market, White Paper from the Commission to the European Council* (Milan, 28-29 June 1985), COM (85) 310, Brussels, June 1985.

1.2.2 *Positive-integration deficits in the Community*

In order to provide a clearer insight into the problems posed by the elimination of integration deficits, a brief summary is required of various characteristic differences between negative-integration and positive-integration measures.

negative-integration measures	*positive-integration measures*
. Strictly defined prohibitions or injunctions under or by virtue of the Treaty, directed generally towards the Member States and in certain instances to private individuals (e.g. Articles 12, 85 and 95 EEC).	. Loosely defined norms in terms of application and content requiring elaboration by the Community legislature, especially the Council of Ministers (e.g. Articles 39 and 100 EEC).
. Lay down more or less hard and fast substantive norms that set strict limits on the freedom of action of those concerned.	. Leave those concerned – both the Member States and the Community institutions – with more or less complete policy freedom (e.g. Articles 92 and 103 EEC).
. Are of more or less permanent validity and constitute the regulative legal framework of the Community.	. Measures introduced in response to the Treaty's positive-integration measures tend to be impermanent, changing with government policy.
. In principle require only single pronouncements by the Community legislature and hence impose few demands on the latter's decision-making capacity.	. Demand permanent attention on the part of the competent Community institutions, especially the Council, and make major demands on the latter's decision-making capacity.
. The provisions in which they are enshrined are generally of direct application: they create rights for private individuals that can be exercised in national courts.	. The Treaty provisions on which positive-integration measures are based are not of direct application: private individuals do not in principle obtain entitlements under them.
. The Court of Justice and national courts play a role in application and enforcement; interpretation of the norms in question – i.e. the determination of their substantive content – is the sole prerogative of the Court of Justice.	. Positive integration takes place primarily in the Commission/Council political circuit, where judgments of policy opportuneness and the ability to reach consensus on the part of the Council are decisive. The role of the Court of Justice is confined to general policy surveillance.

. The mutual co-ordination and scope of the norms are ensured by the Court of Justice (the systematic-teleological interpretation).	. The mutual co-ordination and scope of the positive-integration Community actions are primarily the responsibility of the Commission and Council.
. Ensuring the practical effects of the provisions is done by individuals exercising their entitlements and, to a lesser extent, by the Commission using the procedure provided for in Article 169 EEC.	. Ensuring the practical effect of positive integration depends primarily on the willingness of the competent national legislative and administrative organs to co-operate. Surveillance by the Commission and where necessary enforcement by the courts are secondary, although their importance would appear to be increasing.
. Negative integration, as envisaged in the EEC Treaty, evolves primarily through the courts. The national legislature and executive and the Community legislature are able to exert only limited influence on this process.	. Positive integration evolves primarily in the political circuit. Through their involvement in decision-making (and its preparation) in the Council, national agencies are able to exert an important and (especially in a delaying or obstructivesense) decisive influence.

The survey indicates that negative integration as provided for under the Treaty has run an independent course largely divorced from decision-making in the Council (with rulings by the Court of Justice playing a particularly important part).

Positive integration requires decision-making by the participating governments in the Council of Ministers. The shortcomings in positive integration are closely related to the Council's inadequate decision-making capacity in relation to the proposals put up to it by the Commission. Suggestions for improving this situation generally centre on rendering the formal requirements for Council decisions less stringent. However, there is reason to question the effectiveness of this path *as the sole solution*; the real question is whether the Council, given its composition and mode of operation, can ever be expected to handle the decision-making burden – which is still growing – posed by positive integration. If this is so, the lack of congruence between negative and positive integration evident from the Balassa-Pelkmans table will not be overcome by tampering with the Council's formal decision-making rules.

The chart (p. 10) of the steps needed for a phased realization of the common market makes it easier to obtain a picture of existing integration deficits and may serve as a guideline for subsequent steps to eliminate market imperfections. (According to the theory on which the table is based, any remaining integration deficits should be tackled before proceeding to the completion of subsequent stages, while in each stage where the necessary negative integrating measures have been taken, priority should be accorded to the corresponding positive policy-integrating steps.) The limitations inherent in the table do, however, need to be recognized before it can act as a practical guideline for eliminating existing deficiencies in the process of European integration.

In the first place, the table is confined to indicating the necessary steps for arriving at a common market. The achievement of that objective (however important it may be) is not, however, synonymous with complete economic integration.

Secondly, as an additional and complementary step, effective co-ordination is required at Community level of the macro-economic and monetary policies of the Member States. In the absence of such co-ordination by means of measures towards positive integration, any progress towards negative integration will be inherently fragile – as may be seen from the vicissitudes of the Common Agricultural Policy, the repeated need to resort to the monetary safeguard clauses in the EEC Treaty and the continuing lack of exchange-rate stability under the European Monetary System (EMS). The positive integration required for the completion of the integration process is therefore a good deal more far-reaching than is evident from the chart.

Thirdly, the real situation is more dynamic than can be conveyed on a chart. In the mixed economies of Western Europe, economic, technological and social developments will continually provide national administrations with cause to intervene in an effort to correct or shape market processes. In a common market, the positive integration required will therefore be continually subject to change in terms of scale and substance. New national measures will consistently need to be integrated: a process that can never be fully completed.

In part, the scale and composition of the progress to date towards the negative and positive integration required for a common market reflect the substantive content of the European treaties. The comparatively well advanced integration of policies for the steel industry, for example, are directly related to the substance of the ECSC Treaty. Partly, too, the degree of progress is related to the division of responsibilities among the Community bodies; the comparative success of Community competition policy, for example, derives from the powers assigned to the Commission in this area under the Treaty. Finally, the state of integration may be related to the degree of consensus within the Council on specific subjects: it is this, for example, which largely explains the striking differences between the far-reaching Common Agricultural Policy and the still embryonic Community transport policy. The nature and substance of the steps required to eliminate these integration deficits demand a greater understanding of their background than can be provided in chart form.

In the fourth place the table provides no explanation for the way in which positive integration lags so notably in every phase behind negative integration. This gap is so striking that the unfinished process of economic integration in Western Europe might well be described as 'limping' integration. This applies in two senses: in the first place with respect to realizing the common market, where the positive integration complementing the negative integration straggles clearly behind, and secondly with respect to the state of negative integration, with which the complementary co-ordination of macro-economic and monetary policy is not in step (cf. also section 1.3). Thus the tension identified when defining the problem area at the beginning of this report becomes visible, i.e. the conflict between economic integration within and through the common market, and the integration of government policy.

1.3 Market co-ordination and policy co-ordination: co-ordination deficits

1.3.1 *Linkage between market co-ordination and policy co-ordination*

The conclusion that there are large-scale deficits in the unfinished Common Market and in the co-ordination of macro-economic and monetary policies does not necessarily have serious implications for Community citizens and national governments. In order to determine these conse-

quences, a closer examination is required of the links between market co-ordination – that is, the spontaneous co-ordination of micro-economic decisions through the market mechanism – and government interventions affecting the substance of private decision-making in the market, i.e. the operation of the market mechanism.

In this respect there is a three-fold co-ordination problem, as follows:

a. In the first place the institutional framework must be guaranteed under which the mechanism of a (common) market can effectively co-ordinate the macro-economic decisions taken by actors in the market, hence assuring an optimal allocation of products and factors of production.
   In the EEC Treaty, these institutional pre-conditions reside primarily in the provisions of negatively liberalizing integration and in the rules of law related to the realization and maintenance of conditions of undistorted competition in the Common Market. Deficits in negative integration therefore directly affect (Community) market co-ordination and can depress the potential level of prosperity by interfering with the process of market allocation.

b. In the second place the institutional framework must be assured for the satisfactory substantive co-ordination of decision-making in the governmental sphere. This is a problem with which every modern welfare state has to grapple: the greater the scale, scope and intensity of government action, the greater the problems of decision-making co-ordination. The problem is difficult enough at national level, where it has formed the subject of concern and enquiry since the 1960s; at Community level it is even more insistent. Policy co-ordination in the framework of European economic integration entails more than just the substantive co-ordination of government intervention in various areas, but requires that twelve national governments agree on the objectives as well as the instruments before even reaching the point of considering the substantive co-ordination of policy in various fields. The shortcomings in positive integration noted above accordingly weigh more heavily within the Community than within the national sphere, entailing as they do a lack of proper co-ordination between government intervention *within* as well as *among* the various areas of policy. These shortcomings in policy co-ordination result in major losses of effectiveness in government action within the Community.

c. Thirdly, market co-ordination in the private sector and policy co-ordination in the public sector need to be brought into line with one another.
   When governments intervene in the market tot correct or shape its course, they do so in the expectation that the market sector will respond in a particular way. However, when national governments intervene in the allocation mechanism of an unfinished common market under the erroneous assumption that 'their' market continues to exhibit the features of a national market, their actions may prove ineffective, in that they provoke unintended responses on the part of actors in the market. The latter may decide to evade national policies or, if those policies should happen to create superior conditions of competition, may seek to exploit them in an unintended manner. In this way, the ineffectiveness of national policies in an unfinished common market may disrupt the functioning of that market.
   Conversely, Community intervention in a market assumed to be common, but in practice only partially so, may produce undesired side-effects. Thus major tensions have arisen between the Common Agricultural Policy, geared as it is to the markets for products, and national agricultural structure policies directed towards the markets for the factors of production.

The greater the number of governments intervening in the unfinished common market, the greater the likelihood that the outcome of market co-ordination and the effects of policy co-ordination (as instituted primarily in the national sphere, and inadequately at Community level) will prove mutually disruptive. This risk is present at every point in the Balassa-

Pelkmans chart where negative integration has been unaccompanied by a complementary degree of positive integration, and vice versa. The result is a loss in effectiveness of government policy in a less than optimally functioning market.

1.3.2 *Deficits in policy co-ordination in the Community*

It was argued in section 1.2.2 that deficits in positive integration are the source of most concern, particularly since they are so difficult to rectify. The same applies to deficits in policy co-ordination. It is necessary to examine this point in somewhat greater depth, since the experience of nearly thirty years indicates that market co-ordination does not automatically lead to policy co-ordination but that a solution to the problem of co-ordination in the public sector may, instead, have to create the conditions for solving co-ordination problems in the private sector. Positive integration will need to follow negative integration as closely as possible.

Policy co-ordination is essentially a *substantive* issue: how should the diverse objectives of government policy, covering as it does numerous sectors and sub-sectors, and the related set of policy instruments be co-ordinated so as to ensure that interventionist measures cut across one another as little as possible or are even mutually reinforcing? With the growth of modern national government and the divergent aims of government intervention, this has become an issue increasingly difficult to resolve.

At first sight it would appear easier for this problem to be dealt with at Community rather than national level, since the Community Treaties are primarily confined to economic and (to a somewhat lesser extent) social aspects of government policy. This could, accordingly, set a limit on the range of objectives and interventionist measures to be brought into line with one another. The formation and implementation of socio-economic policies are, however, at the heart of the responsibilities of Western European democracies. It is on these aspects that political and public opinion tends to crystallize, and here that striking a manageable balance between goals and interventionist action proves so difficult in the national arena as well. Moreover, economic policies soon come into conflict with other areas of policy: health, environmental protection, public safety, culture, and so on. Solving and limiting these conflicts requires substantive policy co-ordination going beyond the boundaries of economic and social policy as such, for which reason the objectives and interventions in need of co-ordination within the Community have assumed a scale comparable with that facing national governments [7]. The content of the Community's official publications and the use made during the past ten years of the 'open' competence Article 235 of the Treaty provide an illustration of this point [8].

At national level, policy co-ordination is not just a matter of policy content. Equally, it is a *jurisdictional problem* between central and local government. With respect to relations *between* central and local government, efforts to resolve the problem of substantive policy co-ordination have led to a centralization of responsibilities at the highest level. In addition, decisions taken by central government have assumed greater binding force on lower

---

[7] Representative in this respect are:
CJEC, 5 February 1981, 53/80, *Officier van Justitie v. Koninklijke Kaasfabriek*, Eyssen BV, ECR (1981), 409.
CJEC, 16 December 1980, 27/80, *Officier van Justitie v. A.A. Fietje*, ECR (1980), 3839.
CJEC, 19 February 1981, 130/80, *Fabriek voor Hoogwaardige voedingsprodukten Kelderman BV*, ECR (1981), 527.
CJEC, 17 March 1983, 94/82, *Officier van Justitie v. De Kikvorsch Groothandel-Import-Export BV*, ECR (1983), 947.

[8] A. Tizzano, 'The powers of the Community', in: *Thirty years of Community law*, op. cit., p. 43.
I.E. Schwartz, art. 235, in: Von der Groeben, Von Boeckh, Thiesing, Ehlermann, *Kommentar zum EWG-Vertrag*, II; Baden-Baden, 1983, pp. 1157-1263.

levels of administration. *Within* the various central governments, efforts have been made to resolve the co-ordination problem by the introduction of co-ordination procedures and co-ordinating policy statements, such as plans and programmes.

At Community level, however, the jurisdictional problem cannot be resolved in the same way. Compared with the shift in competences from local to central government, the transfer of powers from the Member States to the Community since 1958 has remained limited. Nor have the Member States become noticeably more tied to Community policies. The more recent powers assigned under Article 235 of the Treaty would in fact appear to be of more limited binding force than the powers explicitly provided for under the Treaty itself.

In consequence, we find that *between* the Community and the national states, powers have been assigned to the de-centralized (i.e. national) level which, under a federal or pre-federal system, would ordinarily have been assigned to the federal government. Furthermore, the Member States are a good deal less tightly tied to Community decisions than are lower levels of government to the central government in a national system. The national states have, therefore, gained powers, while the Community has become weaker.

Within the Community, resolving the jurisdiction problem has also proved considerably more difficult than at national level. This is principally related to the structure of the Council, in which the specialized Councils, bringing together national departmental ministers, enjoy a greater freedom in forming 'their' policy than is customary at national level. (The manner in which the Common Agricultural Policy has assumed a life of its own in the Agriculture Council, irrespective of the financial constraints imposed by the Finance Council, provides a clear illustration.) It is also related to the growth in policy co-ordination at national level: to a greater extent than before, national ministers participating in Council meetings consider themselves tied to the substantive co-ordination of their own government's policies. The greater the extent to which the unity of (co-ordinated) national policies has been procedurally enshrined, the less ministers will be prepared to give up those policies for the sake of Community unity. Solutions sought at national level to the co-ordination problem as a jurisdictional issue would therefore appear to intensify the problem at Community level.

Policy co-ordination is also an *administrative* problem. The implementation of Community policy is to a large extent left to national administrations, the composition and quality of which can vary considerably. Where the regulations introduced by the Community differ from well established national rules or policy traditions, the parties required to implement them can run into conflicts of loyalty. If, in addition, ministers do not fully support Community policy, the unity of that policy and its implementation will obviously come under strain, particularly if the implementation of Community policy appears to cut across national interests. The difficulties in inter-state commercial traffic consistently arising as the result of national administrative practices are symptomatic in this respect. Even if Community policy is co-ordinated in substantive and jurisdictional terms, its implementation may fall foul of this administrative aspect of the policy co-ordination problem. As the problems in implementing the Common Agricultural Policy show, far too little attention is paid to this aspect in the formulation of Community policy.

This brief survey of the policy co-ordination problem indicates that in terms of scale and intensity, the problem of policy co-ordination at Community level approaches that at national level; that in terms of the allocation of responsibilities it can be a good deal more difficult to resolve than at national level; and that in an administrative sense it runs up against weaknesses that have largely been overcome in the national sphere. As a pre-condition for strengthening market co-ordination, overcoming the deficits in policy co-

ordination is as urgent as it is an awkward task for the process of European integration.

1.4 Deficits in integration and co-ordination: deficiencies in the capacity to act

1.4.1 *Linkage between co-ordination deficits and policy effectiveness*

Deficits in market co-ordination lead to an imperfectly functioning market, deficits in policy co-ordination render government policy ineffective, and a lack of alignment between market and policy co-ordination leads to mutual disruption. The unfinished process of integration within the Community consequently creates risks for both Community and national policies and the interests served by those policies. As such, reducing the integration-deficits and deficits in co-ordination in the process of European economic unification is not just a matter of Community interest but is also required for the interests that national policies are designed to serve.

An integration proces marked by growing co-ordination deficits may also be described, rather less abstractly, in terms of a loss in *capacity to act* on the part of the Member States and the Community. A survey of these losses in the various areas of government policy provides an insight into the gradually growing gap between what the governments within the Community *aim at* with their actions and what they are in fact able to *achieve* with their residual and assigned set of policy instruments. A general description is provided below of the most important consequences of the unfinished integration for the capacity of the Member States and the Community to act. To make matters clearer, losses in the capacity for effective action are, where possible, discussed in terms of integration and co-ordination deficits.

1.4.2 *Consequences for the national capacity to act*

The markets for products and factors of production have become the object of intensive government involvement in all modern parliamentary democracies. At issue is a great variety of objectives in the fields of socio-economic policy, social policy, public health and safety, and environmental protection. A characteristic feature of all these forms of government intervention is that they are directed towards specific aspects of the economic behaviour of actors in the market. Some of these measures concern permission to carry out certain economic activities (business establishment legislation); others lay down qualitative or quantitative standards for the marketing of specific products (merchandise legislation); and others again may regulate behaviour in the product markets (price legislation). Increasingly, government intervention has become concerned with the means of production (e.g. in environmental legislation and in regional-economic and sectoral policy).

In most cases these regulations have the capacity to affect international traffic in industrial goods and factors of production and can influence the pattern of international trade. Generally, the latter is an unintended side-effect accepted as inevitable, but not infrequently the Member States resort to intervention partly or explicitly with a view to the implications of these measures for trading flows (i.e. disguised trade restrictions).

Negative integration has had major consequences for Member States' intervention in the market. This is a matter of both legal and practical restrictions flowing from the existing level of negative integration.

Statutory restrictions arise out of the primary prohibitions contained in the EEC Treaty relating to the introduction of the Common Market, such as the prohibition on customs duties and comparable levies in inter-state commercial traffic. These negative-integration prohibitions can severely curtail the capacity of national governments to intervene in international commerce.

Major sections of *national* market regulation are consequently affected more or less radically. Many of the existing national regulations have accordingly ceased to be fully reliable or have at least become less effective. This applies both to standards governing the access of goods and factors of production to the market and to standards regulating certain aspects of market behaviour. If negative-integration prohibitions designed to establish the Community market mechanism are not accompanied by corresponding steps towards positive integration at Community level, policy co-ordination at national level is made more difficult, and the capacity to act reduced.

The EEC Treaty specifically recognizes the right of Member States to intervene in the market in a crisis or emergency. This includes intervention affecting international commercial traffic [9]. The application of these rights is however formally restricted, and may not be invoked for purposes of economic policy. Such measures must be strictly confined to the needs of the objective in question and must not amount to disguised discrimination [10]. A situation therefore arises in which the lack of corresponding positive integration at Community level can hinder the formation of adequate and coherent national policies: policies which, however inadequate, can in turn disturb the (Community) market co-ordination made possible by negative integration, since government intervention for other than economic policy objectives frequently represents a financial burden for the economic actors on which it bears. Such measures accordingly affect the conditions under which national enterprises operate in the common market and, as a result, the functioning of that market. The greater the differences in national regulations (e.g. environmental or safety measures), and the more that the enterprises in question are dependent for sales on markets elsewhere in the Community, the greater the likelihood that the unintended side-effects (in the form of market losses) of purely domestic regulations will cause governments to refrain from inherently necessary and useful acts of intervention. The frontiers opened up by the Treaty prohibitions of a negative-integration kind therefore lead to a race towards a minimum level of regulation for certain economic activities, resulting in both losses in prosperity and a comprehensive loss in governmental capacity to act. To avoid such a 'race towards the bottom', certain minimum norms and standards need to be determined at Community level to which national governments are bound [11].

The losses in capacity to act described above may be ameliorated by steps towards positive integration corresponding to the degree of negative integration, so that policy responsibilities are transferred from the national to the Community level. While such a transfer of responsibilities (as possible for example under Article 100 of the Treaty) may curtail the Member States' capacity to act, the interests at issue need not suffer if the *responsibilities in question can be exercised equally effectively at Community level.* This precondition is, however, an exacting one, and is rarely fulfilled at Community level since the circumstances in which the Community is required to formulate and implement substantively co-ordinated policies are considerably

---

[9] Articles 36, 48, 56 and 66 EEC contain the public order safeguard clauses. These concern permanent exceptions with a high degree of substantive similarity in the following fields: prohibitions on quantitative import and export restrictions (Art. 36 and Arts. 30-34 EEC); the free movement of workers (Art. 48 EEC); the right of establishment (Art. 56 in conjunction with Arts. 52-58 EEC) and the free movement of services (Art. 66 in conjunction with Arts. 59-68 EEC).

[10] *Inter alia* CJEC, 20 May 1976, 104/75, *Adriaan de Peyper*, ECR (1976), 613.
CJEC, 22 June 1976, 119/75, *Terrapin (Overseas) Ltd. v. Terranova Industrie C.A. Kapferer & Co.*, ECR (1976), 1039.
CJEC, 10 October 1978, 3/78, *Centrafarm BV v. American Home Products Corporation*, ECR (1978), 1823.

[11] Ch. Heller and J. Pelkmans, 'The Federal Economy: Law and Economic Integration and the Positive State - The USA and Europe Compared in an Economic Perspective', in: Capeletti et al., *op. cit.*, pp. 245-412, esp. pp. 258-261.

more difficult than those at national level. The proposition that the unfinished process of common market integration has led to a diminution in the capacity for effective policy action would therefore appear incontestable.

No matter how incomplete the process of integration may be, and however inadequately the common market may perform its co-ordinating function, the *practical* restrictions resulting from negative integration are very considerable. Although as matters stand the Treaty provisions designed to bring about a common market largely leave the statutory freedom of the Member States to take measures in the field of macro-economic policy unimpaired, the effectiveness of those policies has been greatly reduced: if the statutory competence to carry out certain measures forming part of a complex of mutually inter-related measures required for the effective conduct of policy disappears, the remaining statutory competences also become less effective in practice. This 'leakage' effect is caused by the inter-related nature of government intervention in the field of economic policy. The linkage between internal and external equilibrium makes it necessary for the national states to be able to screen off their anti-cyclical policies from outside disturbances. This applies both to demand management and its co-ordination, and to national instruments: budgetary policy, wages and (especially) prices policy and monetary policy. The more that the cross-border movement of goods, services, money and capital is liberalized, the greater the loss in effectiveness of purely domestic macro-economic policies if these are out of step with those of major trading partners. Conversely, national states become more vulnerable to external disturbances as their control over the scale of trade, money and capital flows diminishes. Thus deflationary policies elsewhere can, by disturbing a country's external equilibrium, seriously destabilize domestic expansionary policies. The effects of national policy leak as it were across the border, while its vulnerability grows. Negative integration thus creates a need for positive integration, in the absence of which national macro-economic intervention in the common market will remain ineffective and insufficiently co-ordinated. This lack of policy co-ordination can in turn disrupt market co-ordination.

Comparable considerations apply to selective domestic structural policies which, as regards support measures or aids (the most important form of such intervention) are tied to Articles 92 and 93 EEC (negative integration), but which have also become more vulnerable within those margins. This is because the conditions and developments in the market which selective structural policies seek to influence are subject to the – still imperfect – allocation mechanism of the common market. Studies to date suggest that the geographical concentration of economic activities has been considerably accentuated by the functioning of the uncompleted common market. The efforts that governments are required to make in order to achieve a satisfactory distribution of economic activity have consequently become correspondingly more onerous. In addition the free movement of goods an the free right of establishment (negative integration) mean that national policy has become more sensitive to the effects of policies administered elsewhere: Delfzijl in the Netherlands and Emden in West Germany, for example, compete for the same investment. Negative integration here impedes the national set of policy instruments, and the unfinished state of market co-ordination increases the policy burden borne by national governments while, on the other side, the policies implemented at national level disturb market co-ordination. The lack of parallel positive integration means that the market intervention carried out by national governments takes place in an uncoordinated manner. The lack of policy co-ordination thus disturbs market co-ordination: imperfect government policies generate an imperfectly operating market. Here, too, the capacity for effective action on the part of national governments leaks away on a large scale.

Very soon after the first steps towards negative integration in the mid-1960s, it became apparent that the advent of the common market would

have major implications for domestic sectoral policies [12]. The sensitivity of such policies to external disruption almost inevitably obliges the various governments to intensify their interventionist measures. The resultant 'subsidy contest' between Member States has led to a massive squandering of public funds within the Community; presumably it has also so delayed the ultimately inevitable rationalization of various major sectors that even the healthier enterprises have ultimately suffered as a result.

The industrial renewal and development policies currently being pursued in various Member States (which focus virtually throughout the Community on much the same economic activities) run the same dangers as defensive sectoral policies: by outbidding one another, the Member States threaten the creation of over-capacity in fields for which there is no world market.

The economic policies of Member States are not the only area to have been rendered vulnerable by the unfinished state of economic integration. National measures to correct imperfections in the functioning of the market or to protect interests that might suffer in a situation of unfettered competition (such as statutory requirements in the interests of social security, public health and safety) are drawn up by the central government. In principle they apply equally to all actors in the market and are implemented in the same way in the interests of equality in the market. When the Member States individually begin to introduce such measures in an unfinished common market, it is likely that those measures will vary in terms of content and operation. As a result, both the protection of the interests involved and the ensuing commitments and burdens may also diverge. In these circumstances a common market - however imperfect - makes it much simpler for parties in the market to evade the statutory requirements of a particular state by transferring their activities elsewhere within the Community. In such a situation there is a fair likelihood that national governments will avoid going too far. In areas of government responsibility other than economic policy, therefore, domestic intervention also becomes exposed to the consequences of uncompleted market integration. The current difficulties to limit emissions that could acidify the air and soil afford an excellent illustration. Because the uncompleted process of integration acts as a background factor making national policies more vulnerable, it limits the capacity of the Member States to act effectively: national powers leak away.

The Member States have not remained entirely passive towards the consequences of unfinished negative integration, especially when driven to take action by the economic recession. Making use of the room left by the safeguard clauses in the EEC Treaty for dealing with disturbances, they resorted to the introduction of regulations having the *deliberate* side-effect of protecting national products on national markets [13]. Not infrequently, such measures are introduced in response to lobbying by the industries concerned. Because of their side-effects, these regulations do not comply with the conditions stipulated in the Treaty, and are therefore legally vulnerable. Nevertheless, they have proved hard to get rid of in practice and have created substantial obstacles to inter-state commercial traffic. Furthermore, such measures create a bad example: a measure introduced by one state

---

[12] This may be illustrated by the instance of French planning. In the case of sectors that had become exposed to competition in the common market, the official five-year plans no longer afforded a frame of reference because the sales prospects and price levels for those industries were determined by international market factors. Enterprises in these sectors consequently proved increasingly reluctant to work in conformity with official planning, and policies co-ordinated at national level rapidly grew ineffective.

[13] J. Pelkmans, *De interne EG-markt voor industriële produkten* (The Internal EC Market for Industrial Products), WRR Preliminary and Background Studies Series no. V47, The Hague, Staatsuitgeverij, 1985, pp. 153-158.
A. Mattera, 'Les nouvelles formes du protectionisme économique et les articles 30 et suivants du Traité CEE', Revue du Marché Commun, 1983, May, no. 267.

tends to elicit retaliatory measures in other states. In this way deficits in positive integration result in unco-ordinated national intervention, which in turn further upsets the already inadequate (common) market co-ordination. Imperfect and far from effective government action thus constitutes a serious threat to negative integration.

1.4.3 *Consequences for the Community's capacity to act*

It may readily be seen from the Balassa-Pelkmans chart that the ability to act effectively lost by the Member States as the result of the unfinished process of economic integration does not find a substitute at Community level. The chart indeed provides a flattering picture, for the fact that negative-integration steps are flanked by positive-integration ones provides no indication of the *quality* of those positive measures. The Community may in principle have powers, but their inter-relationships, enforceability and translation into (national) administrative practice (as discussed in section 1.3.2) set limits on the ability to conduct coherent policies geared to the co-ordination of the common market.

The shortcomings in the powers and policy structure of the Community may be analysed from various viewpoints.

If these shortcomings are approached from the angle of *integration deficits*, one comes up against the lack of specific powers, substantively incomplete powers and, in terms of envorceability, imperfect powers at Community level. These were previously discussed in section 1.2.2.

Taking the approach of *policy co-ordination deficits*, an assessment may be made in terms of criteria with which the distribution, formulation and execution of specific government powers must comply for government action to be effective (i.e. a balance between powers and policy objectives, instrumental cohesion, enforceability and effectiveness, and adequate administrative co-ordination). An assessment of this kind cannot, however, be made in abstract terms, but must be based on specific government responsibilities. Thus the management of a customs union imposes different demands in terms of the establishment and distribution of powers than does the administration of a common agricultural or industrial policy. The fact that the policy structure of the Community exhibits serious shortcomings in this respect was discussed in section 1.3.2.

If, as a third type of approach, the assignment of powers is examined *functionally*, we find that much the same pattern is observable in all highly tiered political systems, such as federations and confederations. The similarities become even more striking if the analysis is extended to cover the historical evolution of policy and the distribution of policy powers. The following more or less fixed functional patterns may be distinguished [14].

1. The statutory framework for the establishment and functioning of a national market is generally determined by the central (or federal) legislature and is applied and enforced according to consistent yardsticks. This applies not just to typical economic legislation (e.g. on restrictive practices or the right of business establishment) but also to the statutory framework governing public order and public health and safety. When new grounds for government regulation arise, such as environmental protection, it is the central legislature that rapidly obtains the running, if not a monopoly. The requirements of unity and equality in an integrated national market lead as it were automatically to the assignment of regulative and often executive powers to the central or federal government.
2. Where the government decides on a systematic, planned approach towards market co-ordination (e.g. regional economic policy or sectoral

[14] B.S. Frey, *Democratic Economic Policy*, Oxford, O.U.P., 1983.

policy), the extent to which the national market is integrated proves decisive for the allocation of powers. In so far as policies aim to influence decision-making by actors in the market, these will be a central or federal government prerogative. To the extent that lower, territorially or functionally decentralized levels of government are involved, they will be strictly tied to the policy margins laid down by the central authorities.

3. Anti-cyclical policies are invariably the responsibility of the central or federal government. This arises in the first place from the objectives of such policies, namely the management of macro-economic aggregates. Secondly, it stems from the fact that the instruments with which such policies are conducted are concentrated at central level: fiscal and budgetary controls, monetary instruments, exchange-rate policy and instruments to control cross-border capital and currency flows and, in some cases, trade policies. In so far as macro-economic policy involves a prices and incomes element, its effectiveness will depend in part on the scale (i.e. national or otherwise) on which it is applied.
4. The growth in the re-distributive function of government has had an unmistakeable centralizing effect. This is related to the substantive aims of such policies, namely the reduction of social inequalities in the personal and regional distribution of income and in prospects for economic development. The principle of material equality occupies a central place in policy formation, and the dictates of unity and non-discriminatory government treatment lead almost automatically to a preponderance of power on the part of central or federal governments.

If the present structure of responsibilities within the Community is assessed in terms of the functional distribution of powers as it has evolved in most compartmentalized political structures, the shortcomings become immediately apparent.

With respect to *market regulation*, including the framework of public order, the degree of communalization is much less advanced than the centralization of the relevant powers at national level.

With respect to the *selective guidance* of economic developments by sector, region or function, the Community presides – with the exception of agricultural policy (and possibly transport) and the sectors covered by the ECSC Treaty – over considerably fewer powers and financial resources. Such policies, which are formed and implemented centrally within an integrated national market, continue within the unfinished common market to be largely a decentralized responsibility.

Macro-economic policies within the common market are conducted at national level. In this area the Community has only weak co-ordinating powers that are awkward to use, besides which it lacks the crucial budgetary muscle required for such policies and the means of enforcing monetary discipline.

The Community's powers to implement *re-distributive policies* are limited in scale and scope. A limited degree of re-distribution (primarily geographic) takes place under the Common Agricultural Policy, regional policy (through the Regional Fund) and social policy (through the Social Fund), but the budgetary resources for re-distributive fund management on the part of the Community are slender in the extreme, when compared with those of the Member States. Within the common market, such policies are largely conducted at national level. Within the Community, the functional distribution of powers is plainly not consistent with the practical (and empirically verifiable) requirements imposed by an integrated common market.

From whatever angle the defects in the Community's powers and policy structure are examined, it is clear that the 'leakage' at national level in the governmental capacity to act has not been properly replaced at Community level. The net result of this unfinished process of integration is a negative sum of national and Community powers which has in turn led to a lack of effective public policies and a poorly functioning common market.

1.5 Conclusion

It will be evident from the description above that the situation caused by unfinished integration in Western Europe contains the inherent risk of self-aggravation as national governments seek to intensify their inadequate intervention in the market and, in so doing, further undermine one another's capacity to act and also that of enterprises operating in the common market. Finding solutions to this problem is therefore an urgent necessity (also from a national viewpoint). It would, however, be illusory to imagine that this can be achieved by means of simple, all-embracing remedies.

The problem of unfinished integration has various if related causes, as outlined above: the structure of the Community itself and its increased diversity, the growth in national government, the destabilization of the world money and goods markets and the stagnation in economic growth. The diversity of background factors means that differing types of solutions are required. This is not a drawback; on the contrary. To anticipate the findings of the next chapter, we may conclude with the proposition that the problem of European economic integration will only be tackled by means of partial solutions. These will vary from area to area and should where possible be mutually reinforcing. Along those lines the elimination of imperfections in the process of integration (in terms of integration and co-ordination deficits) need not run into the sorts of political impasses on which more comprehensive and ambitious remedies have so frequently foundered.

2. MARGINS FOR THE INTEGRATION PROCESS

2.1 Some characteristics of the process of European integration

The consequences of the unfinished integration in Western Europe were outlined in the preceding chapter:

- an unfinished common market, the unity and functioning of which display major shortcomings (i.e. integration deficits);
- deficiencies on the part of the Community in ensuring the unity and effective functioning of the common market (i.e. co-ordination deficits);
- the weakened ability of the Member States to conduct effective policies, without compensation for those losses at Community level (i.e. deficiencies in the capacity to act).

As a result of the uncompleted process of integration, the (primarily) national policies fail to achieve the desired object since they in many ways impede the establishment of a common market. Seen in these terms the uncompleted process of integration is a problem for market actors, the Community and, above all, the Member States, since they still form the principal arena for political decision-making.

In seeking solutions to this problem, account needs to be taken of the special features of the European process of integration. It is not possible to turn to the precedents afforded by existing federal state structures. As indicated in the following section, West European integration differs in three respects from historical federal or confederal examples such as the United States or Switzerland.

2.1.1 *Differences in national backgrounds and policy traditions*

In the first place the national states in Western Europe have formed the basis of social interaction for a number of centuries, as a result of which divergent philosophical, cultural, social and political attitudes have evolved in the individual countries. Negative and positive integration is, accordingly, required to take place within a much more heterogeneous, traditionally-determined setting than in the two federations referred to above and other, well-established federations. This difference is all the more acute because West European integration is not coinciding with the advent of the (positively interventionist) welfare state, but is taking place at the same time as the latter is being consolidated. In the United Stated and Switzerland, by contrast, the establishment of a national market preceded the advent of the interventionist state. This made it much easier to resolve what in the Community is a politically loaded question, namely the appropriate level at which interventionist powers should be exercised. Where the exercise of new powers does not come into conflict with existing entitlements of actors in the market and must not conflict with the unity of and equality of treatment in national markets, such powers are assigned almost automatically to the central or federal government [1].

The European process of integration is inevitably saddled with the problem of integrating national policies and reconciling differences in national policy traditions. In the case of the three largest countries, the economic policies conducted since the Second World War have each been subject to certain constants. In France there is a lengthy tradition of state interven-

[1] Th. Heller and J. Pelkmans, 'The Federal Economy: Law and Economic Integration and the Positive State - The USA and Europe compared in an Economic Perspective', in: Capeletti, *op. cit.*, pp. 397-400.

tionism and a marked degree of integration between government policy and that of (large) private enterprises. In West Germany, by contrast, a sharp distinction was drawn from the outset between the state and the private sector; non-interventionism in the market is the rule. In so far as one can speak of a 'constant' in the case of the United Kingdom it resides in the tradition of Empire and the resultant Atlantic orientation, under which the continent of Europe is viewed with some suspicion. Government policy may be said to have alternated between monetarism (Conservative) and interventionism (Labour).

These differing traditions are discussed in more detail in chapter 3 in relation to industrial policy and agricultural policy.

2.1.2 *The structure of the Community in relation to the national states*

A second fact that needs to be taken into account is that European integration is not taking place within a tightly-knit state system subject to a central authority responsible for essential state functions such as foreign relations, defence and the uniform administration of justice. The structure of the Community is comparatively light. Elements of a classical international organization, such as decision-making in the Council, are combined with those of a pre-federal system, such as the Community's separate legal order, formulated and supervised by the Court of Justice, with materially limited powers, largely in the economic field [2]. The Member States, by contrast, have retained the core powers of sovereign states. They therefore continue to play a prominent part in the Community decision-making mechanism – for which the EC Treaty provides the necessary scope through the important role assigned to the Council of Ministers. The exacting procedural requirements to which the EEC Treaty subjects decision-making in the Council with respect to numerous significant aspects – including the important Article 100 EEC – have proved a structurally weak link. Partly as a result, the harmonization of legislation required for the establishment and regulation of the common market got under way sluggishly and began to lag seriously behind when the Member States expanded and intensified their market regulation in the course of the 1960s.

Over the years the role of the Council has grown in importance. Since what has become known as the 'Luxembourg compromise' of 1966 (never formally recognized by the Dutch government), members of the Council of Ministers are able to plead 'vital national interests' in order to block a decision. This agreement has been applied in such a way that this fundamental flaw in the Treaty (i.e. the unanimity rule) now extends to all sorts of other Community powers where flexible application is essential for effectiveness. In a negative sense, the Luxembourg compromise therefore confirmed the significance of the national states. Since then the diversity of political and economic interests in the Community has grown with the accession of the United Kingdom, Ireland, Denmark, Greece, Portugal and Spain, with a commensurate increase in the problems for the decision-making structure of the Community. Since unanimity is required in the Council for both fundamental issues and technical details, scarcely any concrete political decisions of principle are now taken and politicians allow themselves to be guided by their national (civil servant) experts on detailed matters. The Council of Ministers is no more suited to taking decisions on technical matters than Cabinet at national level. The decision-making burden on the Community and the nature of the decisions to be taken over-tax the decision-taking capacity of the Council which, in practice, operates as an inter-governmental body. Effective action requires a capacity for prompt decision and recogni-

---

[2] Fr. Jacobs and Kenneth Harst, 'The Federal Legal Order: The USA and Europe Compared – A Juridical Perspective', in: Capelletti, *op. cit.*, pp. 169-243.

tion of policy interconnections, of which the Council, overburdened as it is with details, is incapable.

The establishment of the European Council may be regarded as an effort to break the logjam and to develop a new impetus. It is in the European Council that heads of government seek to resolve the major issues. The meetings, which have been held since 1969 and which were more or less formalized at the Paris Summit in 1974, have further accentuated the role of the national states. The intention was to shape Community action in broad terms in certain areas of policy, but in many cases the European Council serves as a board of appeal for technical matters on which national ministers have been unable to reach agreement in the specialist Councils. Not infrequently, the agenda for the European Council is unworthy of the most important political organ of the Community. Expectations with respect to European Councils are often pitched too high and far too many problems are referred to these summits for them to be solved by the heads of governments, who necessarily lack familiarity with the ins and outs of the issues in question. For this reason these summits quite often 'fail', or problems are held over until the next meeting.

2.1.3 *Lack of Community resources in relation to the national states*

A third point of difference compared with the national states is that, the institutions of the Community lack the needed resources to act in a co-ordinating or integrating capacity [3]. National governments preside over a large share of national income, which gives them the capacity to conduct active macro-economic policies. Apart from more traditional instruments, such as legal injunctions and prohibitions, increasing use is made of financial instruments, such as tax concessions, subsidies, benefits and selective levies. These new instruments are in large measure in the hands of national governments. The Community does have resources of its own, but compared with those of national governments these are on a very limited scale. The Community accordingly lacks the interventionist and co-ordinating capacity of national governments and the scope for the institutions of the Community to co-ordinate national macro-economic policies is extremely circumscribed.

It is, therefore, fair to say that the primary responsibility for macro-economic policy resides with the Member States, but the question has to be asked whether those powers can in fact be realized [4]. The free movement of goods, labour, services and capital within the EC means that national policies can lose much of their effectiveness by cross-border 'leakage' effects, as France found when attempting to implement its ambitious plan to stimulate the economy and combat unemployment. Unless the countries of the EC are able to co-ordinate the substance and timing of their policies, it will remain difficult for them to intervene effectively. But even if consensus were to exist on the need for co-ordinated government action, it would still have to be decided what those measures should consist of. Decisions in that respect go through three stages: analysis of the economic process, choice of objectives, and choice of policy instruments.

In general terms it should be possible to reach agreement on objectives such as the need for balanced growth, limited inflation, low unemployment and no marked surpluses or deficits on the balance of payments on current account. However, spelling those objectives out in greater detail, deciding the respective weights to be assigned to them and the choice of policy instruments are closely related to the analysis made of the economic process.

---

[3] K.J.M. Mortelmans and J. Steenbergen, 'De EG-Verdragen in de economische crisis' (The EC Treaties during the Recession), *Sociaal-Economische Wetgeving*, April 1982, Vol. 30 no. 4, pp. 267-301.

[4] J. Zijlstra, *Economische politiek en concurrentieproblematiek*, 'Concurrentie' series no. 2, Brussels 1966, pp. 420-441, has noted this previously.

In practice, that analysis is often politically inspired, which consequently reduces the prospects for success of Community - imposed co-ordination of macro-economic policies. Institutional arrangements (for example in the direction of a European Monetary Union) will therefore remain highly vulnerable. The chances of success will be greater if and in so far as the Member States themselves, under the pressure of circumstances, decide to co-ordinate their macro-economic policies. The to date reasonably successful European Monetary System (EMS) provides an illustration of these two points.

2.2 Three basic political options

In view of the major differences in national backgrounds and policy traditions within Western Europe, and given also the pronounced diversity of national interests in the process of integration, it is scarcely surprising that views between and within the Member States on the ultimate shape of this process should diverge considerably. Taken very generally, three basic political options may be distinguished with respect to the future of economic integration.

The *first* of these would be to do away with the still unfinished common market, as a restrictive and disruptive factor. In practice this option amounts to wholly or partially undoing what has so far been attained in the way of European integration. The *second*, diametrically opposed option is to strengthen the unity and improve the functioning of the common market. This would inevitably entail a strengthening of policy, either through the further communalization of policy, or by tying national policies more closely to community influence and control. The *third* option is to maintain the status quo, in the assumption that the Member States are incapable of accepting any further derogation from their formal powers and that the Community, as a supra-national structure, lacks the legitimation to exercise or decisively to influence the core tasks of the modern welfare state.

The first of these options is certainly not desirable as far as the older Member States are concerned. The degree of market integration achieved at the level of market actors since 1958 means that undoing the progress to date would be singularly harmful for all the national economies concerned [5]. It is not without reason that national employers' organizations in all the Member States vigorously oppose arguments in favour of a more or less far-reaching renationalization of markets. Nor do the trade unions have much sympathy for this option in most of the Member States. For smaller countries, such as the Netherlands, Belgium and perhaps Denmark, this option would have serious consequences in view of the far-reaching interdependence between their economies and those of the other Member States and the limited size of their home markets.

The second option would appear more attractive and can, in a general sense, claim reasonably broad political and public support in most of the Member States, as may be seen from the political support that Commission proposals for completing the internal market consistently receive in the Council of Ministers and the European Council. Provided it is recognized that the strengthening of market integration should proceed in parallel with a strengthening of policy integration, the second option would represent a realistic solution to many problems confronting the Member States.

However, although the objections to the third option are self-evident, a number of Member States - particularly the more recent ones - accept it with few reservations. The background why this should be so is clear. Shortly after a country has transferred substantial powers to the Community -

[5] Cf. Bureau d'Informations et de Prévisions Economiques, *L'Economie de la France à l'horizon 2000*, Paris, Economica, 1984, pp. 399-404.

not infrequently in the face of substantial political resistance at national level - any further limitations on formal national competences, as continued policy integration demands, has little political or public appeal. The fact that the economies of the new Member States are not yet strongly interwoven with the common market means that the unfinished process of negative integration holds out fewer risks for national policy. And where negative integration, in so far as it has been achieved, is perceived as threatening to national policy, these Member States feel themselves to be less tied to that process, having as they do a greater measure of detachment from the history of the integration process. The renegotiations entered into by the United Kingdom and Greece after their accession to the Community are symptomatic in this respect.

Preference for the third option rests, however, on a mistaken equation of the formal power to act and real capacity for effective action. It leaves the issues discussed in chapter 1 essentially unresolved.

From the above it will be evident that preferences for the second and the third options differ markedly within the Community. The older Member States - with certain differences of emphasis and changing types of reservations - tend towards the second option. The more recent Member States - again with varying degrees of emphasis - favour the third option. For this reason further progress towards market and policy integration is almost bound to be more or less differentiated.

As discussed in section 2.1.1, margins for the process of European integration have their origin at national level, for which reason those who prefer the second option will not be able to rely on any large-scale transfer of national powers to the Community level. Nor can there be any expectation that the Community, in seeking to co-ordinate macro-economic policies, will drastically curtail the room for manoeuvre of national budgetary authorities from 'above'.

This means that further progress towards negative integration and the corresponding positive integration in Western Europe will require arrangements which, while theoretically sub-optimal, can nevertheless eliminate existing integration deficits. The possibilities for strengthening the unity and functioning of the common market for industrial products and for the further communalization of industrial policy will be examined in chapter 4. The scope for differentiation in Community action and for differentiated forms of integration will also be explored.

Elaborations of the second option do not necessarily assume agreement among the Member States over the relationship between the operation of the common-market mechanism and the corrections effected by government intervention in the field of industrial policy. There have traditionally been far-reaching differences of view on that relationship among the old Member States, and these will have increasingly to be resolved at Community level as the unity and functioning of the common market improve. The resultant complications in terms of policy integration and co-ordination shortcomings are examined in chapters 3 and 4.

2.3 Differentiation and differentiated integration

The strengthening and, in the longer term, the completion of the internal market will pose major problems, especially for more recent members of the Community. In difficult economic circumstances, these Member States are required to adjust in a comparatively short space of time to the *acquis communautaire*, while not having any influence over the nature of those achievements and arrangements. Primary and secondary Community law and the Community policies based on that law are new to them. It is almost inevitable that they will adopt a cautious attitude towards any initiatives that serve to restrict national policy margins still further and to enlarge and

strengthen the powers of the Community.

It is in this light that the debate needs to be examined about a 'Europe of varying speeds'. Although the terminology and details may differ, the basic concept remains the same, amounting to the fact that it would be incorrect to allow progress towards integration to be determined by the weakest link or the slowest Member State. Those countries that wish jointly to move faster towards integration in certain areas should, the theory holds, be allowed to do so.

The Belgian Prime Minister, Leo Tindemans, elaborated this idea in his report on European Union of 29 December 1975, in which he argued for a 'new approach' under which:

1. those states that have the capacity to make progress have an obligation to do so;
2. those states that have what the Council, on the recommendation of the Commission, considers to be objective reasons for not going further refrain from doing so, but at the same time receive assistance from the other Member States to close the gap [6].

Similarly, the Council of State in the Netherlands suggested in its response last year to the Bill to ratify the Treaty of Accession of Spain and Portugal that consideration be given to differentiated integration 'in some sense' as a matter deserving closer attention in connection with the difficulties of decision-making in the EC [7].

In the survey below of the possibilities open under current EC law, a distinction is drawn between 'differentiation' and 'differentiated integration' [8]. In the case of *differentiation*, the fundamentals are laid down in a decision by a Community institution, but there is a separate regime for various Member States. *Differentiated integration* is an arrangement in which a limited number of Member States do not participate for an indefinite period. A particular form of this is a two-tier system, in which a number of the Member States move ahead towards an accelerated integration of which the Community is not yet capable.

2.3.1 *The hard core of Community law*

The 'hard core' relates to the areas of policy in which decisions are bound to be taken under the EEC Treaty, either by the Member States (i.e. the elimination of barriers to the common market) or by the institutions of the Community (implementation of a common agricultural policy, the approximation of legislation, a common transport policy, common commercial policy and competition policy). The decision-making procedures for Community institutions are subject to the following rules: all Member States must be involved in decision-taking; the arrangements or regulations should in principle be uniform; the unity of the market and of Community law require them to be valid throughout the Community; and integration once achieved should not be undone.

None of this rules out the possibility of *differentiation*, which is increasingly prevalent in practice. In this respect a distinction may be drawn in terms of time, place and substance. The regulation may either indicate the distinction itself or may permit differences by according the Member States certain discretionary powers. Similarly temporary non-participation for a definite or indefinite period can be permitted. Two important conditions, deriving from the judgments handed down by the Court of Justice do,

---

[6] *European Union*: report by Leo Tindemans, Prime Minister of Belgium, to the European Council, 1976, Bulletin of the European Communities, Supplement 1/76.

[7] Parliamentary Proceedings, Lower House, 1984-1985 session, 19 122, B, p. 6.

[8] This section draws on J.J. Feenstra and K.J.M. Mortelmans, *Gedifferentieerde integratie en gemeenschapsrecht. Institutioneel- en materieelrechtelijke aspecten* (Differentiated Integration and Community Law: Institutional and Substantive Law Aspects), WRR Preliminary and Background Studies Series no. V48, The Hague, Staatsuitgeverij, 1985.

however, apply: differentiation must be justified in terms of objective criteria, and it must be temporary. The ultimate aim remains a uniform regulation for a fully integrated market. Regulations once adopted may not be replaced by differentiated regulations.

While differentiation may be virtually unavoidable in practice, such measures are certainly not ideal. In some cases they can appreciably slow down progress towards a common internal market. For Member States that would otherwise be quite capable of absorbing the consequences of accelerated progress towards the common internal market, the fact that differentiation is possible can act as a pretext – often a very convenient one in domestic political terms – for not taking part for the time being, so that the process of integration becomes unnecessarily fragmented and complex. This forms the reason for the requirement that, in completing the internal market, any decision in favour of a faster pace for certain Member States must be based on more or less objectively verifiable factors, such as length of membership and the actual degree of integration between their economies. If this condition is neglected the danger arises of a fragmented, 'à la carte' internal market.

The alternative of temporary differentiation of the measures for bringing about the internal market (i.e. differentiated integration) is also risky because it can intensify the centre/periphery problem within the Community. If the actors in the market were to react to a two-tier liberalization by concentrating their investments in that part of the Community where the liberalization of inter-state traffic was the most advanced, this would constitute a serious drawback. The first requirement that such differentiation needs to satisfy is that it must not be allowed to magnify the problems of Member States temporarily lagging behind. The problems that the United Kingdom, Denmark and Ireland have encountered in trying to board the moving train of Community integration provide grounds for marked caution when it comes to temporary variations in Community policies.

Where the coercive powers of the Community are at issue, which can only be exercised by means of decisions by the Council of Ministers, *differentiated integration* would appear to be ruled out by definition. There are, however, indications that such integration may be possible in certain circumstances, namely where a number of Member States move ahead towards a greater degree of integration than the majority are prepared to accept. This applies especially to initiatives on the part of the older Member States to achieve greater liberalization in their intra-trade than that required under Community law. Faster progress by a few can act as a spur to later integration by all.

In order to ensure that a two-tier structure would indeed fulfil this role and not split the Community, Feenstra and Mortelmans have suggested in their WRR paper that a number of limiting conditions need to be observed. In the first place, two-speed arrangements would need to anticipate the integration envisaged by the EEC Treaty. Secondly, such arrangements should be consistent with the provisions of Article 5 of the Treaty (i.e. should facilitate the attainment of Community aims) and should not detract from the *acquis* or attainments to date. Thirdly, there should not be any Commission proposal going equally as far or further. Fourthly, no commitments should be entered into with third countries that could at some stage impede Community activities. (These four requirements mean that information on plans to forge ahead would need to be submitted to the Commission.) Finally, the number of states taking part should be limited. It is difficult to specify an exact limit, but if there were eight or nine participants or, more generally, a number sufficient for a qualified majority in the Council of Ministers, it would no longer be possible to speak of admissable moving ahead: in those circumstances a Community solution would be so close at hand that there would be no real grounds for breaking the principle of Community decision-taking.

These intergovernmental initiatives – for which there exists a recognized

precedent in the EEC Treaty in the form of Benelux - operate in the grey zone of the legally permissible. In so far as they present the Community legislature with a *fait accompli* and can adversely affect the Member States that do not participate, they are hard to reconcile with the legal principles fundamental to the process of integration such as market unity, equality in the market, Community appropriateness and reciprocity. In the case of initiatives to 'move ahead' in areas coming under the EEC Treaty, it would therefore be advisable for a procedure to be included in the Treaty enabling an at least preliminary appraisal to be made of such initiatives to see whether they were consistent with the interests of the Community and the other Member States.

In noting that the possibilities for 'moving ahead' in relation to the 'hard core' of Community law are extremely limited in a legal sense, there is one important exception. In the case of Member States whose economies are already so intertwined that they are no longer able to conduct independent macro-economic policies, Community law does not debar them from 'spontaneously' co-ordinating their policy objectives and forms of intervention. Co-operative co-ordination of this kind - which would largely render exchange controls in inter-state commercial traffic redundant - must, however, comply with two conditions. In the first place the selected objectives and instruments must not be allowed to come into conflict with the general guidelines for Member State macro-economic policies laid down under the convergence decision of 18 February 1974. In practice this is unlikely to be a serious constraint, since Community recommendations are generally too broad and general to serve as a legal frame of assessment for national policies [9]. Secondly, the Member States wishing to forge ahead must not be allowed mutually to decide on interventions that obstruct inter-state traffic, either directly or indirectly: the injunctions on the individual Member States apply equally to spontaneous forms of co-operation.

2.3.2 *Article 235 EEC*

Article 235 of the EEC Treaty empowers (indeed enjoins) the Council, acting by means of a unanimous vote, to enact the appropriate provisions if any action by the Community appears necessary to achieve, in the functioning of the common market, one of the aims of the Treaty in cases where the Treaty has not provided for the requisite powers. It is up to the Council to decide whether a particular matter falls within the scope of Article 235 or not; its powers must always be specifically assessed in these terms, for which reason they cannot really be qualified as Community tasks or obligations [10]. An exclusive power can be said to exist only if the Community has in fact exercised that power for the enactment of legislation and administrative provisions. Those provisions may not, however, amount to the 'transfer' of an area belonging to the hard core of Community law (e.g. Article 43 EEC on which the CAP is based).

It will be evident that these features of Article 235 also permit differentiation and a two-speed arrangement, provided the constraints referred to earlier are taken into account. The room for moving ahead will in general be somewhat greater than that of the hard core of the *acquis* since the objec-

---

[9] G. Nicolaysen, 'Instruments juridiques des politiques économiques nationales et leur compatibilité avec le droit communautaire - La République Fédérale d'Allemagne', in: Institut d'études européennes, Université libre de Bruxelles: *Discipline communautaire et politiques économiques nationales*; Deventer, Antwerp, Boston, London, Frankfurt, Kluwer Law and Taxation Publishers, 1984, pp. 77-103.
M. Zuleeg, Commentary on Article 103 EEC, in: H. von der Groeben, H. von Boeck, J. Thiesing et al., *Kommmentar zum EWG-Vertrag*; third edition, 2 volumes, Baden-Baden, Nomos Verlagsgesellschaft, 1983, Vol. I, pp. 1794-1797.

[10] A. Tinnazo, in: Commission of the European Communities, *Thirty Years of Community Law*, European Perspectives Collection, Office for Official Publications of the European Communities, Luxembourg 1983, p. 43.

tives laid down for the Community in these areas are rather less specific in form. Moreover, where Community decision-taking proves unfeasible, forms of *differentiated integration with the participation of a greater number of Member States* (than in the case of a two-speed arrangement) are, subject to certain strict conditions, not to be ruled out in principle. The fact that such a Community decision was nearly reached means that procedural safeguards in addition to the conditions for a two-speed arrangement are required. According to Feenstra and Mortelmans these safeguards could be effectively incorporated in a 'differentiated framework decision' taken by representatives of the Member States meeting under the aegis of the Council, to which only those Member States actively participating in the arrangements or provisions would be bound.

The role of the Commission, as the 'engine' of this type of integration, might take the following form. It would submit proposals to the Council and seek to achieve a Council Decision up to the very last point. If this proved unfeasible the Commission could re-shape the proposal into a draft framework decision, meaning that potential participants would, at the very least, have to consult the Commission about the introduction of such an arrangement. Once the arrangements were in place the Commission would then be required to encourage the remaining Member States to take part and to replace the framework decision with a full Council Decision. It would also be important for the European Parliament to be involved in the draft decision and for the decision to be published in the Official Journal of the Communities upon adoption. The inherently temporary nature of any two-speed arrangement should be explicitly laid down in the framework decision, since the objectives of the EC ultimately call for universal and uniform regulation. Finally the involvement of third countries that could otherwise complicate the transition to a Council Decision because Member States had entered into previous commitments with them, should be ruled out.

2.3.3 *Subjects outside the scope of the Treaty*

In the case of subjects clearly falling outside the scope of the EEC Treaty, and also not affected indirectly by the integration provided for under it, Community regulation is not possible and the Community decision-making rules consequently do not apply. In principle the Member States are free to enter into co-operation in any combination or form. Here too, however, the obligation under Article 5 not to jeopardize Community principles and attainments must be taken into account. This obligation becomes all the more pressing the more closely the agreements in question are related to areas regulated under the Treaty.

2.4 Policy co-ordination

It was noted in section 1.3.2 that there are three aspects to the deficits in policy co-ordination within the Community: a substantive policy aspect, a competence aspect and an administrative (implementation) aspect. Reducing these deficits can tie in with one or more of these aspects.

2.4.1 *Substantive co-ordination*

The need for substantive policy co-ordination within an unfinished common market is the direct outcome of the divergent national interventions in the market which, because they diverge, have the potential to disrupt both the functioning of that market and the policies conducted by the Community. The difficulty of achieving such co-ordination in turn largely depends on the scope, frequency and intensity of those national interventions.

If the main cause of the problem of substantive policy co-ordination is seen in these terms, the following possibilities arise for dealing with it.

The first possibility is to *reduce the scope, frequency and intensity of na-*

tional market interventions. At first sight this solution might appear at variance with the growth of interventionism at national level, but at this level, too, it has a certain currency. Appreciation of the fact that the unfinished common market renders national policies even more vulnerable and ineffective than they already are could provide grounds for moderation in the preparation and formulation of national interventions, in which case the problem of substantive policy co-ordination would be alleviated at both national and Community level.

The second possibility lies in determining *general norms with which the market interventions of the Member Staters must comply.* An example of this would be the introduction of a reciprocal obligation on the part of the Member States to accept one another's production standards. Member States would remain free to draw up specific standards for their own products, but would be obliged to admit products manufactured elsewhere. Because stricter standards would render domestic producers less competitive elsewhere in the Community, national governments would become more cautious in their interventions. As noted in section 1.4.2, the risk remains of a 'race to the bottom' in national regulatory activity, whereby essential interests could be in jeopardy. This risk can be reduced by tying the general obligation for reciprocal acceptance to a minimum standard with which separate national standards would have to comply.

A third possibility is to *reduce the substantive policy co-ordination burden at Community level.* It would be advisable here to tackle matters more strategically and, at the present stage, to concentrate on policy integration shortcomings in the first four or five stages of the common market (see chart in section 1.2.1). Co-ordination of national policies on factor markets is (and this applies also to the Member States) in fact more necessary in a finished common market for products than it is in a situation that continues to leave national governments with room to screen off their factor policies with disguised commercial policy measures.

As experience at national level shows, it is much harder to revise or adjust measures once they have been implemented. At Community level, the practical problem arises that policy co-ordination is often concerned with existing national interventions. There is therefore a lot to be said for raising the procedural thresholds for the introduction of national interventions.

Reducing the substantive policy co-ordination burden at Community level does not necessarily mean that national interventions will become less numerous or disruptive. The reverse course can also be followed by rendering Community policy and the negative integration achieved less vulnerable to disruption by national interventions. Possibilities certainly exist in this regard, as discussed in chapters 4 and 5 in relation to the problem of the common market for industrial products and the common agricultural policy.

2.4.2 *The problem of competences*

The competences aspect of the deficient policy co-ordination within the Community is often presented too one-sidedly as a choice between national and Community powers. Such one-sidedness is further accentuated because the resources with which those powers are to be exercised are often left out of account. This one-sided approach is not helpful at Community level because the Community is not empowered to take unilateral decisions on the assignment of powers. It also unnecessarily narrows the margins within which the Member States can reach agreement and leads to apparent solutions only, namely when the Community is assigned powers which, by way of compromise, have first been rendered ineffectual.

At national level, the competences aspect of the co-ordination problem has been solved by the *concentration* of the relevant market regulatory powers at central level. Such a solution is much more difficult within the Community. Apart from the resistance to such a move on the part of the

Member States for reasons of sovereignty, it would not necessarily resolve the substantive policy issue since the Community will remain unable to conduct counter-cyclical or redistributive policies on any scale as long as the fiscal and budgetary sovereignty of the Member States is unimpaired. For the present, then, the counter-cyclical and redistributive functions that belong so firmly to central government within the nation state remain outside the range of the Community [11].

A second way of approaching the competences aspect is that of *co-ordination through subordination* by sharing the actual administration of powers between the Community and the Member States. The latter would continue to retain their powers, but in exercising them would be subject to substantive guidelines and directives drawn up by the Community. Resistance to this form of co-ordination is much weaker because the Member States are tied only in terms of implementation and do not lose their intrinsic powers. This form of co-ordination may relate to both the objectives and the means of intervention by national agencies, and the degree to which the Member States are bound may range from informative through programmatic/indicative to normatively coercive binding.

Similarly the Community's regulative instruments may vary. Broadly speaking they fall into two categories, the formal/procedural and the substantive/normative. Where the aims and nature of the policies to be co-ordinated tend to be volatile, regulative instruments of the first kind are generally more effective; where policy goals and interventions are more stable, the co-ordinating Community influence on national policy can take a more substantive regulative form. Solutions by means of co-ordination through subordination - which may take all sorts of forms - do, however, require the Community to have the ability to determine the central Community interests in the co-ordinated policies more independently and to preside over the means of enforcing co-ordination among the Member States where it is meant to be binding. If these two conditions are satisfied, this type of policy co-ordination *between* the Community and the Member States may provide a solution to the formulation and implementation of macro-economic policies in a more finished common market. It also affords possibilities (as yet insufficiently researched) for improved co-ordination of the sectoral, regional and functional policies at national level.

A third possibility consists of *induced co-ordination* by means of selective incentives. At national level it is not uncommon for substantive policy co-ordination between central and local government to take place in this way without any formal amendment to the assignment of responsibilities and without legally binding lower levels of government in the exercise of their powers. By the selective use of its powers and financial resources, the central government can as it were create material constraints providing rational grounds for lower levels of government to fall into line. This type of solution to the competences problem opens up certain possibilities for the Community as well and, within the limited margins afforded by the Community's own resources, is used from time to time in the administration of the Community regional and social funds. However, the limited scale of these funds in relation to the activities of the Member States sets strict limits on the Community's capacity to create material constraints. An insufficiently applied exception exists with respect to the Community's powers under Articles 108 and 109 EEC to stipulate the types of economic and monetary policies to be pursued by a Member State receiving balance of payments support [12].

---

[11] For the various forms of co-ordination see L.A. Geelhoed, 'De Europese Unie', Introductory Paper for the Netherlands Association for European Law, *Sociaal-Economische Wetgeving*, November 1975, Vol. 23 no. 11, pp. 669-712.
G. Kirchoff, *Subventionen als Instrument der Lenkung und Koördinierung*; Berlin, Duncker & Humblot, 1973, pp. 134-155.

[12] The procedure is spelled out in greater detail in Council Decision 71/143/EEC of 22 March 1971, OJ L73/15.

A much more important regulative instrument of an indirect kind resides in the uncompleted nature of the common market itself which, as noted in section 1.4.2, imposes major practical limitations on the actions of Member States. If these limitations are properly recognized they can provide the Member States with incentives for more or less spontaneous co-ordination in exercising their 'own' powers. Seen in this light the consolidation of negative integration can strengthen the conditions under which the Member States voluntarily co-ordinate their interventions in response to their vulnerability when acting alone. From a Community viewpoint, induced co-ordination of this kind could be encouraged by strictly guarding and if possible strengthening the incentives generated by negative integration (meaning the sparing use of the safeguard clauses).

A fourth type of possibility consists of *co-operative co-ordination*. Instead of unilaterally creating practical or financial constraints with which lower levels of government must fall in line, the central government can enter into indicative agreements in which the parties concerned agree on the use they make of their respective powers. Co-operative co-ordination along these lines occurs particularly in federal state systems such as the United States and the Federal Republic of Germany as an alternative to the far-reaching centralization of powers with the federal government.

In a tiered state structure, this form of co-ordination has two major advantages: it leaves the autonomy of the entities concerned formally unimpaired, but nevertheless permits radical differentiation in the co-ordinated policies. This type of co-ordination lends itself to the solution of co-ordination problems within a heterogeneous community because it is suited to both substantive policy differentiation and differentiated integration. However, the drawbacks with which it is associated (of which the problem of lack of democratic legitimation is inherently insoluble) provide grounds for caution, especially where the co-operative co-ordination concerns a limited number of Member States.

2.4.3 *The administrative problem*

The availability of substantive powers and the associated means of intervention provide no assurance that they will be used effectively. A number of important shortcomings in the policy formation and implementation structure were noted in sections 1.2.2 and 1.3.2 that could obstruct the implementation of an effective, co-ordinated policy at Community level.

A first weakness, namely the unanimity rule for all Council decisions, has since the early 1970s formed a recurrent theme in studies of the inadequate functioning of the Community. This concentration on just one element of the decision-making problem in the Community is, however, misplaced: in a Community of twelve members, achieving a simple (let alone a qualified) majority in the Council will require just as much consensus formation as the achievement of unanimity in the 'old' Community of six members. It is therefore illusory to imagine that the simple introduction of majority voting will restore the conditions for effective policy co-ordination at Community level.

A second weakness in the decision-making structure consists of the parallel existence of specialist ministerial Councils, in which decision-making often goes its own way with little reference to other areas of policy. For all the efforts of heads of government in the European Councils, the co-ordination of Community policy in the separate areas has proved extremely difficult in practice.

A third weakness in the decision-making process is more substantive in nature. This is that the increased heterogeneity of the Community makes it increasingly difficult to take decisions that apply equally in all the Member States. Where there are solid reasons - such as differences in the standard of

living, or if private industry in one or more of the Member States is clearly less competitive than elsewhere. Where there are solid reasons – such as differences in the standard of living, or if private industry in one or more of the Member States is clearly less competitive than elsewhere – the Member States tend to adopt a cautious approach towards Commission proposals that appear inconsistent with their interests in the short term but which are also vital for continued progress towards integration. In these instances serious conflicts arise between the decision in principle in favour of greater economic integration and actual voting behaviour in the Council. These inner conflicts in the attitude of the Member States form a serious obstacle to progress towards integration.

A fourth weakness in Community decision-making concerns the fact that it is limited to policy-formation. Because Community policy is usually carried out by national agencies, feedback from the executive to the policy-formation level is inadequate. Experience with the Common Agricultural Policy has shown that for the Member States, the political acceptability of Community decision-making is such a central issue that the practical feasibility of the compromises reached is no more than a minor consideration. The result is that the practical effectiveness of policies suffers, as may be seen from the numerous complaints about the abuse or unintended use of Community resources.

The fifth weakness is closely related to the foregoing. Because the implementation of Community policy is left to national agencies, irregularities and differentiation are almost unavoidable. These occur at the level of national executive agencies, such as the intervention bureaus for agricultural products, and also at the level of the national legislature, where the adjustment of national legislation in line with Community directives is often subject to considerable delays [13]. While the EEC Treaty contains provision for supervising the implementation of Community policy, the structure of the Commission is too weak for effective supervision [14]. As discussed in section 1.3.2, the lack of administrative unity within the Community forms a serious obstacle to the effective and coherent implementation of Community policy.

The possibilities examined above for reducing shortcomings in policy integration and co-ordination at Community level need not be viewed in isolation but can be applied in varying combinations to deal with specific, substantive policy problems with which the Community and the Member States have to contend. The choice of a combination does not have to be made in abstracto. Various solutions can be worked out for each policy problem, sometimes making concessions to policy content, sometimes to the degree of cohesion or the limited preparedness of national governments to transfer or curtail their powers. Various types of solutions are examined in somewhat greater detail in chapters 4 and 5 in relation to the problems of the common market for industrial products and the Common Agricultural Policy as identified in chapter 3.

---

[13] H.H. Maas and J. Bentvelsen, 'De tijdige uitvoering van EEG-richtlijnen in Nederland' (The Timely Implementation of EEC Directives in the Netherlands), *Bestuurswetenschappen*, 1978, pp. 443-473.
T.M.C. Asser Institute, *Uitvoering van het Gemeenschapsrecht in Nederland* (Implementation of Community Law in the Netherlands), Asser Institute Colloquium on European Law, 10th session 1980, The Hague, 1981.

[14] H.A.H. Audretsch, *Supervision in European Community Law*, 2nd edition, Deventer, Kluwer, 1985.

3. UNFINISHED INTEGRATION AND THE MARKETS IN EUROPE

3.1 Introduction

In chapter 1 the way was examined in which the existence of deficits in integration and policy co-ordination and deficiencies in the capacity to act have a far-reaching impact on the functioning of markets. This chapter outlines the nature of the problems in the internal markets for industrial goods and agricultural products.

These two markets are both large in size and of vital importance for the economic development of Europe but face totally different kinds of problems. Industry is grappling with stagnating growth and the loss of market shares, and needs new growth impulses. Agriculture, by contrast, is faced with stagnating demand, over-production and a related major Community financing problem. The agricultural sector also has to deal with regional imbalances, the threat of social dislocation and environmental problems in major areas of Europe.

The problems faced in these two markets have been described in detail in two studies commissioned by the WRR and published in advance of this report [1].

3.2 The internal market for industrial goods

The sharp decline in economic growth in Europe during the last decade may in part be attributed to the reduced adaptability of the European economy, resulting in a loss in competitiveness in relation to the United States and Japan.

European industry lost ground to these competitors, which preside over large, uniformly regulated internal markets. This is evident for example from the EC's drastically reduced share in world exports of industrial goods since 1973 and the much greater penetration of Japanese and American industrial exports in intra-EC trade [2]. Losses have been sustained particularly in markets for new, technologically advanced products.

Industry's capacity for adjustment has been seriously tested in recent years. The solid Bretton Woods monetary arrangements have been revised, while the structure of the markets for energy products and other basic raw materials has changed radically. The speed of technological change has had far-reaching consequences for the product mix and the organization of production. The changing political balance in society led to rapid changes in the distribution of income. Social and cultural changes have produced a different work ethos and changing attitudes towards life in general. All these changes have altered the structure of the market and led to an extensive system of market regulation.

Markets clearly stand in need of a certain amount of regulation. Repeated intervention in the free market is required to ensure its proper functioning and to protect the interests of individuals, groups of economic actors and

---

[1] G. Meester and D. Strijker, *Het Europese landbouwbeleid voorbij de scheidslijn van zelfvoorziening* (European Agricultural Policy beyond the Point of Self-sufficiency), WRR Preliminary and Background Studies Series no. V46, The Hague, Staatsuitgeverij, 1985. Jacques Pelkmans, *De interne EG-markt voor industriële produkten* (The internal EC Market for Industrial Products), WRR Preliminary and Background Studies Series no. V47, The Hague, Staatsuitgeverij, 1985.

[2] *OECD Economic Outlook*, no. 37, Paris, June 1985, p. 50 ff.

national states. In doing so, however, barriers are created that obstruct access to markets and increase the costs of exiting from a market. Access may be obstructed by official regulation in such areas as marketing, business establishment and access to capital or specific technical knowledge, while barriers to leaving a market may be thrown up in the form of labour market regulations and the general framework in which that market operates. Exiting from a market may also be obstructed by potential capital losses, such as expensive investments required in order to comply with statutory environmental-protection regulations, and which would have to be written off.

These barriers to entry and departure may reach the point that the pattern of demand and supply is disrupted or that a market loses its ability to adapt to and absorb exogenous disturbances.

The way in which the industrial market operates is determined not just by the regulation of that market itself but also by regulations affecting the functioning of markets for other goods, services and factors of production. Finishing the integration of the industrial market concerns all instruments of economic policy.

The protection of sectional economic interests at national level has led to a differentiated pattern of market regulation in the various countries of the EEC. Each country seeks to ameliorate its own problems by compensatory measures of a protectionist nature or tries to avert problems by neglecting to introduce regulative measures that would adversely affect the competitiveness of its own industry; all of which acts as a brake on progress towards a homogeneous internal market. As long as individual countries have separate policies on (for example) social security, the labour market, financial markets and environmental issues, completion of the European market for industrial products will be only partly achievable.

These structural hurdles are further complicated by problems of economic management, in that the protected recession renders it difficult to correct market disturbances. In these circumstances unsatisfied consumer wants are not converted into effective demand because consumers facing difficulty in finding work revise their original plans as buyers in the market for final products. Effective demand consequently lags far behind potential demand, with the result that producers have difficulty selling their goods, and revise their purchasing plans in the factor markets downwards. In this inter-related process in which expectations are frustrated, prices, wages and interest rates have a tendency to become inflexible and hence fail to fulfil their market-clearing function satisfactorily.

The need for policy-makers therefore resides primarily in breaking through the restricted behaviour of market participants by conducting balanced anti-cyclical policies and by reducing market disturbances. The latter has to be done without endangering the operation of the market and without causing excessive damage to the interests of those being protected by the regulations. This is a difficult assignment because the accumulation of problems has its origin in the very close links between the various markets, in which actors are constantly taking dual decisions as buyers and sellers of goods and services and factors of production. The complicated connection between markets and the need for co-ordinated deployment of policy instruments is examined in more detail in chapter 4.

The sections that follow confine themselves to examining the extent to which obstacles in the market for industrial products may be attributed to the unfinished integration of that market and the extent to which the existence of market obstacles in turn impede further integration.

To begin with the links between market obstacles and uncompleted integration are examined, followed by a consideration of the policy problems flowing from the unfinished state of economic integration and of the differences in national policy traditions that hamper positive integration in the market for industrial products. Finally the interests of Dutch industry in a

flexible and uniform European home market for industrial goods are outlined.

3.2.1 *Market obstacles and unfinished integration*

The lack of a large and homogeneous home market frequently has a cost-increasing effect for European industry and results in an additional budgetary burden on government.

Access to nearby foreign markets is obstructed by physical, technical and fiscal barriers that necessitate border interventions within the EC and entail social costs. In addition there are the extra costs resulting from the lack of harmonization in technical regulations. The differences in national regulations with respect to technical standards for products in the fields of health, environment, safety and consumer protection are substantial and occasion expensive adjustments in production and marketing. The EC transport market is subject to quota arrangements and bilateral agreements that lead to higher transport costs or indirectly put up costs through the inefficient use of transport facilities.

Discriminatory government procurement policies similarly lead to direct costs as the result of uncompleted market integration and result in excessively expensive government purchases, especially in the field of military equipment, public works and technologically advanced products, which can only be produced efficiently on a large scale.

Similarly government aid to industry could be lower in a Europe with an integrated market. Total expenditure in the EC on sectoral, regional, export and general support is considerable, reaching between 5 and 10% of industrial output in the largest countries.

Taken as a whole the direct costs and budgetary burden resulting from a non-homogeneous home market for industrial products has been estimated at 3 to 5% of EC GNP [3]. Some of the costs of an uncompleted market are not, however, quantifiable.

Discriminatory government procurement policies, trade protection and some of the industrial support policies are manifestations of a fragmented market. A market of this kind throws up obstacles for enterprises that would otherwise be able to produce the same products more cheaply and efficiently than protected national industries, and leaves these enterprises to deal with a market share below its true potential. Furthermore, the inefficient capacity for adjustment of the industrial structure creates new barriers. The slowness or difficulty with which new industries can get off the ground induces capital to flow elsewhere (e.g. the United States) where the return is higher, or keeps capital locked into traditional industries where yields are kept artificially high by means of protection and government aid to industry. The result is a downward spiral, in which it becomes steadily more difficult for new industries to take root.

In order to get through the pre-competition period and for sales to be profitable, the development of new products often requires an ever-increasing minimum scale. The same applies to the improvement and introduction of new production techniques. Another difficulty lies in the lack of targetted, properly co-ordinated support for research and development. Fragmentation in this area results in duplication and a smallness of scale inadequate for lifting industry over the high thresholds to new markets. The enormous and rising costs of these development stages require a large, homogeneous and dependable home market. In practice, however, industry is held in much too tight a straitjacket.

The protection of sectional economic interests at national level in the Community contains the danger of ever-increasing market fragmentation

[3] Pelkmans, *Op. cit.*, p. 120.

and of the goal of a large, internal market proving increasingly out of range. The problem of stagnating growth of industrial production then becomes both the cause and the consequence of a stagnating process of integration, the outcome being a return towards more nationalist policies with a corresponding protection of the domestic market. Alternatively – an equally great problem – a tendency arises to minimalize market regulation in order to prevent competitive disadvantages (the 'race towards the bottom' referred to in section 1.4.2), thereby seriously threatening the legitimate protection of economic interests.

Both phenomena are taking place at the present time. The greatly increased flow of complaints submitted to the Commission about infringements of the EEC Treaty by other Member States points to an increasing resurgence of national intervention [4]. The present reluctance to burden the market with a more radical environmental policy is indicative of the tendency to minimalize protection of the interests of economic actors other than the industries directly involved.

3.2.2 *Policy problems resulting from unfinished integration*

Integration of the market for industrial products requires the elimination of fragmentation in four differing but often closely related fields of policy: the customs union, the common commercial policy, competition policy and industrial policy in the strict sense. The nature and scale of problems in these four areas and their mutual inter-relationships are examined in the sections below.

3.2.2.1 The customs union

The lack of completion of the customs union is at its most obvious in the numerous border formalities that obstruct inter-state commercial traffic. These are symptomatic of the deficits in positive integration within the Community and are not to be remedied simply by negative integration measures, as becomes evident if the causes behind these formalities are examined. Among others they stem from:

a. differences in norms and standards in national safety, health and environmental legislation, resulting in cross-border checks and other administrative formalities;
b. differences in the systems, scope and rates of indirect taxes. The elimination of these differences would require a degree of positive integration that severely infringed sovereignty in national tax legislation. Although the Treaty does provide a legal basis (art. 99 EEC), the lack of progress to date is indicative of the resistance at national level;
c. obstacles to commercial payments (i.e. exchange controls). Under a system of more or less fixed exchange rates within a common market, differences in the domestic macro-economic policies of the Member States (as manifested for example in varying differing rates of inflation) inevitably lead to external economic imbalances in individual economies. To redress these imbalances the Member States in question are obliged to invoke exceptions to the – negative – freedom of commercial payments (Articles 108 and 109 EEC). Experience has shown that measures taken under these safeguard clauses tend towards permanence. Exchange controls, which are such an impediment to intra-Community commercial traffic, have proved almost ineradicable. In this way the lack of macro-economic positive integration creates a mortgage on the unity of the common goods market;
d. obstacles to the transport of goods. The liberalization of transport and a unified transport market are a necessary follow-up to the free movement

[4] Commission of the European Communities, *Assessment of the Functioning of the Internal Market*, Com(83) 80, EC, Brussels, 1983, p. 36.

of goods, the lack of which creates numerous obstacles to intra-Community goods traffic. The integration deficits in this area relate to both negative and positive integration. Eliminating these obstacles demands a preliminary political choice concerning the principles according to which a European transport market should be regulated, which the Council has so far been unable to make on account of the widely divergent views of the Member States on those principles.

Internal frontier controls obstruct the existing movement of goods that has nevertheless grown up. Imperfections in the customs union also, however, quite commonly prevent the cross-border movement of goods at all:

a. differences in national norms and standards can be so marked that actors in the market simply do not bother to ask for foreign products or refrain from marketing their own products elsewhere in the knowledge that meeting the specifications will be too costly. Prior certainty that products can be marketed elsewhere without running into differing regulations often forms a pre-condition for the ability to operate effectively in a foreign national market. Such certainty can be provided only by positive integration measures designed to complement the steps towards negative integration;
b. with the growth in the government share in national income the significance of governments in the market has increased too. In various areas of the market of vital importance for technological development, the government has become the most important party on the demand side. Although, as part of the system of negative integration, the Treaty prohibits governments from discriminating in the placement of orders, procurement in practice departs considerably from the letter of the Treaty. Because national governments tend to concentrate their business on the home market, cross-border commercial flows fail to take place and certain product markets remain fragmented on a national basis. The growth in state aid to industry since 1958 has further strengthened traditional public sector preferences for the domestic market. Obviously governments do not procure from the foreign competitors of a publicly supported enterprise, and not uncommonly supported enterprises are obliged to give priority to another supported enterprise when making purchases. Apart from the effects that aid to industry can have on the working of the common market, resort to this instrument produces further obstacles to market integration, in that potential movements of goods fail to eventuate. The mechanism for enforcing negative integration measures are inadequate;
c. the harmonization of national legislation and co-ordination of national policies, supplemented by intensified integration in fields where there is active government involvement, help remove major obstacles to customs union. Such steps are not, however, enough. In certain cases an effective customs union requires a uniform Community regime. This applies especially (although not solely) to industrial property rights, where the side-by-side existence of independent national legal systems can in itself act as an obstacle to the unity of the customs union.

The imperfections in the customs union noted above are largely traceable to shortcomings in policy integration. Shortcomings in negative integration derive less from the nature of the agreed rules and regulations than from the Community's inability to enforce them.

The obstacles to intra-Community trade are largely attributable to the behaviour of national central governments. This is scarcely surprising; the imposition of qualitative controls over market behaviour and the selective shaping of such behaviour (e.g. by state aid to industry) are, as seen in section 1.4.3, inherently a matter for central government at national level. The elimination of policy integration deficits in the customs union would therefore ideally rest on the centralization of regulative powers at Communi-

ty level. By essentially leaving these powers with the Member States while at the same time tying their implementation to harmonising and co-ordinating Community regulations, the EEC Treaty has created an imperfect solution, although, with the odd exception – such as legislation in the field of industrial and intellectual property rights – this solution need not lag far behind the theoretically optimal solution. This does however pre-suppose that the Community is capable of exercising its harmonising and co-ordinating powers effectively. The imperfections in the customs union derive not so much from the allocation of powers as such but more from the poor enforceability of the powers assigned to the Community.

3.2.2.2 The common commercial policy

Together with the common customs tariff, the common commercial policy forms the external keystone of the customs union. It is, however, a keystone marked by significant imperfections which on the one hand have a deleterious effect on the customs union and, on the other, obstruct the implementation of an industrial policy on a scale commensurate with the common market.

The internal free movement of goods within the Community and commercial policy towards third countries are indissolubly linked. Once goods from third countries have passed through the customs formalities of one of the Member States and the requisite taxes and dues have been paid, they are free to move within the customs union on the same footing as products from the Member States themselves. This assumes that Community commercial policy is 'common' not just in terms of powers but also substantively and that it is therefore in step with the development of the common market. The common commercial policy does not, however, measure up to this ideal. While it is true that the Community has exclusive powers in this field, the Member States are frequently authorized to take independent trading measures when it comes to implementation. In part, this practice is related to the refusal of most state-trading nations to recognize the Community in international trade. Partly, too, it is related to the differences in traditional trade policies among the Member States, in turn accentuated by the close linkage – especially in the larger Member States – between trade and foreign policy. In substantive terms, therefore, it is not possible to speak of a common commercial policy.

These problems have been aggravated by the fact that classical trade policy instruments are losing significance and that new forms of trade policy, such as commodity agreements and technical co-operation agreements, have become more common. Although the Court of Justice has ruled that these new forms also fall under the exclusive commercial policy competence of the Community, the Member States have been disinclined to set much store by that judgement. Finally, reference needs to be made to the various informal ways of protecting domestic trade and industry. The most important of these are the 'voluntary export restrictions' negotiated either by a Member State itself or by private industry with third country governments or enterprises. It is difficult for the Commission to obtain much leverage in this field; the form taken by informal protection can be modified at short notice and national governments cannot easily be held to account.

The outcome of the above is that trade with third countries is to a significant degree determined by the varying regulations of the Member States in the field of commercial policy. The discrepancies between these regulations can give rise to large-scale diversions in internal commercial traffic and can cause major economic difficulties in other Member States. It was with this in view that Article 115 EEC was drafted: subject to the authorization of the Commission the Member States may take protective measures against goods from third countries that are already in free circulation within the Community. As experience has shown, such safeguard measures can impose serious restrictions on the internal free movement of goods and form one reason for the persistence of customs barriers in intra-Community trade.

Although the judgments handed down by the Court of Justice do not in any way suggest entitlement to the application of Article 115 EEC in the case of nationally differentiated commercial policies to be automatic, the Commission has proved particularly liberal in its application of this provision.

In drawing up and implementing its commercial policy as a complement to industrial policy, the Community runs into the fact that the latter policies are primarily determined at national level. Divergent views among the Member States on industrial policy make the selective use of commercial policy instruments at Community level more difficult. This too results in pressure from the Member States for authorization to institute safeguard measures under Article 115 EEC – or, if this does not succeed, to take disguised protectionist measures at national level.

In the case of commercial policy, positive integration deficits are not primarily a matter of the allocation of powers – or certainly not if the Court of Justice's interpretation of Community powers is followed. In principle, at least, the Community's substantive powers go far enough. The weak spot is instead that the Community is not really able to use those powers in a *communal* sense – a shortcoming that results in frequent resort to Article 115 of the Treaty and hence to barriers to intra-Community trade.

The inability to conduct an effective commercial policy is also related to the lack of substantive policy co-ordination. Commercial measures at Community level can only flank economic policy if such policies are conducted at the level of the common market. A common commercial policy as a complement to divergent national economic policies is ineffective and ultimately conducive to market fragmentation rather than integration. Seen in this light, the functional requirement for the common commercial policy to be conducted at a central (i.e. Community) level has implications for the allocation of industrial policy powers between the Community and the Member States.

3.2.2.3 Competition policy

For a proper understanding of the imperfections in Community competition policy, the latter needs to be viewed in a broader sense than classical restrictive practices legislation (directed especially towards the manufacturing sector). Commercial services continue to grow in significance and there is a close link between the development of important markets for high-technology industrial products and commercial services.

The limitation and distortion of competition within the Common Market are, it may be noted, attributable only in very small measure to the formation of industrial cartels. The unity and effective operation of the market is threatened at least as seriously by the conduct of national governments (in the form of governments agencies and enterprises) and by official measures (e.g. state aids) seeking to influence the market selectively. In so far as the conduct of national governments affects inter-state commercial traffic, this has been discussed in section 3.2.2.1. The problem of restrictive practices policy as such, as conducted by the Community under Articles 85 and 86 EEC, resides for the manufacturing sector primarily in such matters as the scope of exemptions for sole distributor and sole agency contracts. The restrictive conditions under which these are permitted make serious disruption of intra-Community commercial traffic unlikely. Moreover, the powers which the European Commission has in this field make it comparatively simple to redress any undesirable consequences that may come to light.

More important is the fact that where the Community competition provisions apply in principle to the services sector as well, Community restrictive-practices policy has not got off the ground, the main cause being that in important segments of the market for services there is not even an imperfect common market. This applies to services that either form the subject of extensive national regulation – transport, credit and insurance business – or are to a significant extent a government monopoly, such as telecommunications. The operative range of commercial policy is thus intimately bound up

with the liberalization of the markets for services and factors. This is a substantive co-ordination problem, traceable especially to the lack of positive integration with respect to the regulation of those markets: the existence of separate national regulations and the disparities between them restrict and distort the functioning of the common markets in such a way that private cartel formation is of little account.

Public enterprises constitute a sensitive problem for Community competition policy. Enterprises of this kind are at once the object and an instrument of official economic policy in most of the Member States. As such, the implementation of a Community policy on restrictive practices – as expressly provided for under Article 90 EEC – with respect to public enterprises can also come into conflict with the policies administered by national governments towards and by means of these enterprises. Restrictive-practices policy – which in principle forms part of negative integration – needs therefore to be flanked by more or less far-reaching forms of positive integration. Failing that, Community policy on restrictive practices on the part of public enterprises is bound to remain a problem.

Apart from leading to market fragmentation, governments' role as a customer and principal can distort competition when the scale and composition of government payments are partly based on considerations of economic policy. Not infrequently these contain hidden preferences and subsidies granted on the grounds of regional or industrial policy. Although the Community does have powers of a negative integration kind (Articles 30, 59 and 92-94 EEC), these are not enough in themselves, particularly since government participation in the market is being increasingly fashioned into an instrument of industrial policy in virtually every Member State.

In broad terms the same applies to government as a provider of subsidies: state aids are financial advantages or reductions in the burden on industry that are designed to bring the market behaviour of the subsidized enterprises into line with the objectives of government policy. Seen in these terms it is evident that state aids necessarily affect competition and hence the operation of the market mechanism. Following up the GATT and ECSC Treaty, the EEC Treaty provides under Articles 92-94 for a fairly strict state aid mechanism (i.e. negative integration) the implementation of which is assigned primarily to the Commission. The practical consequences of these provisions have lagged far behind what the authors of the Treaty had in mind. State aids, in all their guises and practical modalities, have become the most important instrument for selective government policy in the Member States. The Commission has, however, been able to impose certain restrictions on the forms of state aid most injurious to inter-state trade. With respect to the most common support regulations forming part of regional and sectoral policy, it has had to confine itself to determining the margins within which such regulations are permitted. Thus it has been able to do little more than file down the roughest edges of the subsidy 'race' that took place in the Community (especially after 1973). Powers of a primarily negative integration kind, with inadequate means of implementation and control, have proved insufficient to provide a counterweight to the social and political demand for selective economic policies based around state aid to industry. Community competition policy thus lacks supporting forms of positive integration.

The question currently arises whether, in the interests of industrial policy, there might not be room for a certain relaxation of competition policy. To begin with there is a case for encouraging formal collaboration between enterprises in the field of technological research and industrial innovation. Secondly, there is the question as to whether European enterprises exposed to stiff competition in Western Europe and in the world market from enterprises established elsewhere might not benefit from a somewhat less rigid application of the Community competition regime. The linkage with the common commercial policy and the positive industrial policies still administered predominantly by the Member States come immediately to mind in this respect.

Policies to ensure effective competition within the common market need by nature to be determined and implemented at Community level. Community policy on restrictive practices complies with these requirements and does not display major integration deficits. Such deficits do arise where residual national regulation of commercial services acts as a barrier to the introduction of a common market for services and hence prevents a Community competition policy in the services sector. Although the scope of Community powers to counter practices on the part of Member States to restrict or distort competition is adequate, the practical effectiveness of these powers is limited. The Community may be empowered to set limits on national interventionist measures that disrupt the common market, but in the absence of sufficiently effective powers to communalize the national policies which that intervention is designed to serve, it has been unable to achieve its objectives. This positive integration deficits obstructs the establishment of a common market in which the price mechanism can fulfil its co-ordinating function as it should. Furthermore it forms an obstacle to a more subtle application of Community competition rules in the context of an industrial policy.

3.2.2.4 Community industrial policy

The establishment of free intra-Community trade in industrial products supported by a common commercial policy, and the assurance of effective and undistorted competition in the market for those goods, create the conditions in which systematic public intervention to strengthen the competitiveness of European industry can be effective. *Can* be because only if such intervention is carried out at the scale of the common market – i.e. either conducted by the Community itself, or strictly co-ordinated by it – can the intended effects be achieved.

This fundamental requirement is not being satisfied at the present time. The bulk of the intervention carried out in the Community in the name of industrial policy consists of unco-ordinated and often mutually conflicting national measures. As was seen with respect to the customs union and the common commercial and competition policy, such measures can disrupt the establishment of a properly functioning common market for industrial products. The positive integration deficit evident in this area threatens the future of European industry.

Four types of intervention for the purposes of industrial policy may be distinguished at national level:

1. the creation of favourable infrastructural conditions for industrial regeneration;
2. selective government procurement and tendering policies;
3. the application of disguised protectionist measures;
4. the granting of state aid.

Of these, the latter three directly cut across the establishment of a properly functioning common market, while the first type of intervention is a good deal less neutral than it appears at first sight. Seen in this light the further completion of the common market will need to be accompanied by a certain communalization of national industrial policy. Once again, positive and negative integration are complementary.

Reducing these deficits in positive integration is not straightforward. The powers over which the Community presides in this area are largely of the negative-integration kind. It may prohibit certain interventions on the part of the Member States, but is unable to substitute its own measures; nor does it have sufficient powers to co-ordinate Member State intervention effectively. The comparatively limited size of its own resources also limits the Community in implementing a common industrial policy.

When assessed in terms of the requirements of a functional division of powers, the current situation is far from satisfactory. Precisely because disparities in a decentralized industrial policy threaten the unity and effective

functioning of the national markets and lead to a sub-optimal allocation of resources, industrial policies tend to be a central government responsibility in Western industrial countries. This applies also to the necessary infrastructural facilities which, if left to lower levels of government, would not measure up to the requirements of the national market. Where the costs and benefits of these kinds of facilities - e.g. technical research centres, university 'centres of excellence' and large-scale public utilities - transcend state, regional or local boundaries, there is a risk of a sub-optimal level of facilities. Centralizing the allocative decisions relating to those facilities may then become necessary - as is indeed the practice in most Western industrial countries.

3.2.2.5 Conclusion

Taken as an inter-related whole, the integration deficits in the four component areas of a common industrial policy give rise to co-ordination deficits in (i) substantive policy cohesion, (ii) the allocation of policy powers and (iii) the application of those powers. If the industrial policies now conducted largely at national level are taken as the starting point, it is not possible for the commercial and competition policies conducted at Community level to be fitted in with them. In addition, national intervention forming part of industrial policies has the capacity to obstruct greater liberalization in the movement of industrial products.

If the free movement of industrial goods and related services is taken as the staring point, it is possible for the necessary negative integration measures to set limits on national industrial-policy intervention, but they cannot act as a substitute. In so far as the aim of free movement in industrial products has achieved success, the resultant negative integration renders the residual national industrial policies even less effective.

If Community competition policy is to be taken as the point of departure, the distortion in competition arising out of the industrial policies of the Member States will prove hard to eradicate. Conversely, the selective application of competition policy for industrial policy purposes will prove impossible as long as the latter policies find expression in the market in the form of unco-ordinated interventions by the Member States.

The same applies to the common commercial policy as to competition policy, subject to the proviso that each further strengthening and deepening of the industrial policies carried out at national level increases the pressure for a return to nationalist trading policies, with all the adverse consequences that these entail for the free movement of industrial goods within the Community.

These substantive deficits in integration have their counterpart in co-ordination deficits with respect to the allocation of powers. The achievement of substantive cohesion between the four component parts of a common industrial policy is made much more difficult by the fact that the relevant powers are distributed over various administrative layers and that the Community does not preside over the means for enforcing proper vertical and horizontal co-ordination when it comes to the exercise of those powers. This shortcoming is all the more acute in the case of powers concentrated and applied at central level within the national sphere and for national markets. No national market would be able to operate properly if the framework of public order and macro-economic, structural and industrial policies were to be determined and implemented at decentralized level, unless, in drawing up and administering those policies, local government were to be under the strict co-ordinating trusteeship of the central government. It is illusory to imagine that such a miracle could take place in the institutionally much more brittle world of European economic integration.

The co-ordination problem will not be solved simply by a redistribution of powers. If such a redistribution were to mean that strong, easily manageable national powers were transformed into weak, difficult to manage Community powers, the policy co-ordination deficits might be reduced but they would

not be eliminated. The analysis above of the common industrial policy in the broad sense indicates that the *legal* capacity to act is one thing, the *practical* ability another. The free movement of industrial products, the common commercial policy and the common competition policy are all fields with promising Community powers that are however either (in the absence of the necessary decision-making) of limited applicability or (in the absence of the necessary policy instruments) of limited effectiveness.

3.2.3 *Different views of Member States*

Acceptance of the principle of a common market has had a totally different significance for the various Member States [5].

For France the restrictions on national policy instruments inherent in negative integration represented an almost revolutionary change in this country's traditionally dirigist approach, with its emphasis on the central direction of economic development. Another radical change for France was the removal of quotas and tariffs between the Member States and the desire on the part of certain Member States (including West Germany and the Netherlands) for low tariffs at the external frontiers.

As regards positive integration, there is a clear difference of view between France and the remaining Member States on the content and nature of national industrial policy. France has traditionally had an active industrial policy, slanted towards specific sectors and areas of innovation. Considerable importance has been attached under the policy to preserving the dominance of French industry in the domestic market, which was screened off from foreign competitors and investment by official measures. Equally as traditionally, the penetration of foreign markets has received firm official support. French companies seeking to invest abroad are provided with substantial guarantees and concessions. French industrial policy, as institutionalized in the form of economic and social five-year planning (*la Planification économique et sociale*) is characterized by the vertical integration of decision-making by the government and private industry (*l'économie concertée*). The major policy instruments have been:

- comprehensive regulation of trans-frontier traffic in products and factors of production (the key element);
- selective influencing of the national capital market, with preferences being assigned to investments provided for under the Planification;
- a large public element in the business sector, capable of being manipulated for industrial-policy ends;
- selective use of government and semi-government markets for the promotion of industrial activities fitting into the plan;
- state aids and other preferences provided in consultation with the element(s) of the business sector concerned (the so-called *quasicontrats du Plan*);
- the building up and maintenance by the government of a large-scale infrastructure for the industrial sectors favoured under the Plan. This covers not just transport links and communications and the supply of energy but also the financial infrastructure;
- active price policy: this was needed because the screening off of foreign competition and the lack of a policy to promote effective competition in the domestic market had left French industry vulnerable to undisciplined price formation.

---

[5] Pertinent information on this score is provided by the reports on the economic law of the Member States issued by the Community from 1973 onwards in its series'Competition and the Approximation of Legislation'. See in particular the review by P. VerLoren van Themaat, *Het economisch recht van de lidstaten van de Europese Gemeenschappen in een economische en monetaire unie*; 'Competition and the Approximation of Legislation', series no. 20, Brussels, Official Publications Bureau of the European Communities, 1974.

From this review of the instruments of French industrial policy it may readily be seen why that policy has proved so vulnerable towards economic integration in Western Europe and why the further completion of the internal market would leave it still more vulnerable. The weaknesses lie especially in the central function of the instruments to control cross-border traffic, the instrumental use of the public element of the business sector, the preferential manipulation of (semi) government markets, the comprehensive set of instruments for selective state aid and the discriminatory regulation of the capital market. The survey above also indicates that the adoption by the Community of the French industrial-policy model would have to be coupled with a large-scale transfer of powers and would impose major demands on the decision-making, co-ordinating and executive capacity of the Community. Obstacles would, among other things, arise in the common commercial policy, which the French see as subordinate to industrial policy, the Community's financial resources, and in the institutional structure. The necessary 'concerted action' with the business sector requires a far-reaching degree of centralization and a well-developed hierarchical structure. Possibly the major drawback of adopting the French model is that its preparation, elaboration and implementation would demand a degree of unity and discipline barely achievable in France itself, for all its interventionist tradition, let alone in the far more cumbersome and heterogeneous Community decision-making machinery.

In contrast to the tradition in France, it is the market that shapes economic development in West Germany (and, to a certain degree at the present time, in the United Kingdom). In West Germany, the shaping function of the federal government and the *Länder* was deliberately curtailed from the outset and government policy directed towards an open, tariff-free internal EC market for industrial goods and the lowest possible common external tariff. In Great Britain it is not possible to speak of a dominant economic tradition on account of the profound ideological differences between the Conservatives and Labour, but European integration is viewed primarily in terms of negative integration.

West German and British industrial strategy therefore differs clearly from that in France. In France, the stress lies on the maintenance of a stable macro-economic climate, effective competition and a market structure that facilitates flexible adjustment to economic and technological developments. Unlike in France, the West German approach rejects in principle the notion of selective, coercive intervention in the structure of production of enterprises or industries. The application of commercial policy instruments finds no place under this market-oriented approach to industrial policy. On the contrary: both within the Community and in Community relations with third countries, West Germany has generally been a forceful advocate of eliminating non-tariff barriers and continuing to open up product and factor markets. The supply side of the market is currently the object of considerable attention in both Britain and West Germany, where it is hoped that the capacity for industrial renewal will be enlarged by the removal of institutional obstacles preventing the private sector from responding properly to shifts in competitive forces. In these countries, privatization and deregulation are instruments of industrial policy.

Although state aid to industry occurs on a larger scale in both countries, it is not a favoured instrument. In both countries there is a clear tendency to limit its use, and these reservations are fed by increasing doubts as to the effectiveness of this type of intervention as a policy instrument.

Especially in West Germany, considerable weight is attached to the maintenance of the physical, scientific, technological and financial infrastructure on which commerce and industry depend. The same applies (although it is seldom openly admitted) to the (semi) government markets, in which selective preferences for advanced national industries are the norm.

The instruments of industrial policy in West Germany (and Britain) accordingly look quite different from those in France, with much greater emphasis on indirect and structural instruments than direct interventionism.

- Indirect instruments:
  - maintenance of effective competition in the market;
  - preservation of macro-economic and monetary stability;
  - strengthening of the private sector and elimination of rigidities (privatization and deregulation);
  - market expansion by the elimination of non-tariff barriers;
  - improvement and preservation of the infrastructure for commerce and industry.
- Direct instruments:
  - preferences in (semi) government markets;
  - public aids for industrial research and production development and, as a supplement, investment support.

In comparing the West German and British approaches towards industrial policy, it needs to be borne in mind that the policies actually adopted do not always correspond with public postures. The West German government, for example, has on several occasions provided far-reaching state aids to industry (frequently at the urging of or in co-operation with the *Länder*), especially in the context of 'defensive' industrial policy. A striking feature of this approach is the fact that the further completion of the internal market, the expansion and strengthening of Community competition policy and a cautious application of Community commercial policy powers generate few tensions but fit into the objectives of West German industrial strategy and leave the set of national policy instruments largely intact. Only the so-called direct instruments are seriously affected.

Because considerable importance is already attached to the further completion of the internal market and to an intensified common competition policy and because the remaining instruments of industrial policy are essentially subsidiary and temporary, the adoption by the Community of the West German concept of industrial policy would require few supplementary policy powers at Community level. There would be little risk of the Community decision-making mechanism being over-burdened; in principle an extension of the scope (in various areas) of negative integration Community powers would suffice. No major problems in terms of policy content or administrative co-ordination would need arise.

In the case of Italy and, with somewhat different emphasis, Greece and Ireland, an active industrial policy (both national and Community) is primarily regarded as a means of reducing the marked regional imbalances in living standards and economic activity in those countries. Industrial policy operates principally through the large public element of the business sector and an extensive arsenal of state aids. The national (semi) governmental markets tend to be strictly protected. The further completion of the internal market and the expansion and tightening up of Community competition policy will represent a serious assault on the set of policy instruments in these countries and could also seriously erode the effectiveness of their policies since the trend towards concentration in the internal factor markets would be strengthened. These countries are well aware of these consequences, as may be seen from the resistance on the part of Italy to any tightening up in the application of Article 90 of the Treaty, which applies particularly to public enterprises. The obstinacy with which Ireland and Greece have been insisting on economic convergence – meaning in this case a reduction in economic inequalities – as a precondition for the further completion of the internal market also points in this direction. This attitude, however explicable, will confront the Community with problems of redistribution that will impose a major burden on its budget and that could make it more difficult to reach decisions on the finishing of the internal market.

Taken as a whole the industrial strategy of the Benelux states steers a middle course between that of France and West Germany. During the 1970s, in particular, these countries sought to conduct industrial policies in sectoral terms. This approach has since given way in the Netherlands to an 'areas of concentration' policy. In both Belgium and the Netherlands state aids are used as part of 'offensive' industrial policy. The government and semi-government markets also play what appears to be an increasing role in that policy. Attention is also devoted to improvement of the wholly or partially government-funded scientific and technological infrastructure. More consistent with West German views is the stress placed in the Netherlands and Belgium on strenghtening the market sector in its entirety. The same applies to the clearcut rejection of any barriers to investment from third countries and the marked reservations about the application of commercial policy measures in the context of industrial policy, something which the Benelux countries cannot afford in view of their dependence on foreign trade.

The further completion of the internal market and the broadening and deepening of Community competition policy could have major implications for industrial policy in these Member States. The legal margins for using certain instruments will certainly become narrower. More important, however, is the fact that these open economies are extremely vulnerable to an expansion of or intensification in inter-state traffic in factors. This will work through into the effectiveness of their industrial policy interventions, which become highly vulnerable to the reactions of factor markets elsewhere and to the other Member States.

It will be evident from this overview that finding a common industrial policy formula to satisfy the divergent views of the Member States will not be straightforward. The most important difference of principle is that between the French strategy of *reconquête du marché intérieur* and the related application of trade policy instruments in a protective sense (which also finds a certain measure of support in Italy and Greece) and the more reciprocal free-trade orientation of West Germany, Britain and Benelux. The latter approach does not automatically rule out structural increases in the external tariff, but considers these should not be imposed unilaterally by the Community. Other differences are more subtle: the extent to which public enterprises should be used as an instrument of policy, the appropriate level of state aids, and so on.

3.2.4 *The position of Dutch industry*

The internal Community market for industrial goods is of major importance to Dutch industry. Roughly two-thirds of industrial exports (SITC groups 5-8) are directed towards the Community - a particularly high level when compared with the average of 50 per cent among the remaining Member States. The openness of Dutch industry is also illustrated by the fact that imports and exports of industrial products amount to fully one-third of national income, compared with 15 to 20 per cent in most other Member States.

In both an absolute and a relative sense, Dutch industry is closely linked to the European market for industrial goods. The quantitative scale of those links provides a sufficient indication of the importance of completion of negative integration for this sector of the Dutch economy.

On the basis of the Standard International Trade Classification, industrial exports to the Community in 1983 may be divided as follows:

chemicals	32% (SITC 5)
manufactures	27% (SITC 6)
machinery	28% (SITC 7)
miscellaneous manufactures	13% (SITC 8).

Compared with the average figures for the Community (17, 27, 41 and 15 per cent for the four categories), the Netherlands exports a notably high proportion of chemical products (SITC 5) and relatively few machines and vehicles (SITC 7).

These figures do, however, stand in need of qualification. Compared with a gross production value of some 68 billion guilders in the petro-chemical and chemical industries in 1982, of which some 50 billion guilders were destined for export, imports of products required for that production were worth over 40 billion guilders. Although net exports are therefore considerably lower, the chemical sector is clearly of great importance to the Dutch economy, producing 10 per cent of industrial added value and 12.5 per cent of industrial employment.

The same applies to the machinery, electrical engineering and transport facilities industries (i.e. the suppliers of exports in SITC 7). Compared with a gross value of production of nearly 45 billion guilders and an export value of nearly 30 billion guilders in 1982, the value of imports was a little over 15 billion guilders. Although here the lower net export value once again qualifies the significance of gross exports, this branch of industry may also be said to play a major role in Dutch industry, accounting as it does for a quarter of net industrial added value and generating a quarter of industrial employment.

For traditional products (in general SITC goods 6 and parts of SITC 8) market fragmentation is much less of a problem: policy fragmentation is much less pronounced and trading patterns well established. The policy fragmentation referred to in the previous section particularly affects products in SITC groups 5 and 7, and some of those in group 8 (especially medical equipment and measuring instruments). It is these categories that contain high-technology products, and which are regarded as having a high growth potential and therefore being important for the Dutch economy. The market imperfections arising from uncompleted integration therefore particularly affect the chemical and other sectors in which the more advanced products are manufactured. Trade in hi-tech products is obstructed by protectionism, discriminatory government procurement policies, ineffective supervision of state aid, and so on. These obstacles impede the necessary product and production-process innovation. Nor are the economies of scale achieved that are so necessary for the development of these products on a profitable basis.

Two markets of particular importance for the Dutch economy – chemicals and electrical engineering – are characterized by large imbalances, which cannot be solved by national government policy.

The state of the chemicals market has changed radically since the two oil crises of the 1970s. The price increases and consequent cost increases worked their way through into the final prices of the chemical sector. The markets for base chemicals and chemical semi-finished products – products making up over three-quarters of the production and export value of the Dutch chemicals industry – were affected particularly heavily. Large sections of this sector suffered from over-capacity and a reduced rate of return on capital, not just in the Netherlands but also in other countries of the Community [6]. The Dutch chemicals industry has every interest in improved access to other European markets and in an industrial reform programme on a European scale. The Dutch chemical industry presides over an exceptionally modern production apparatus and enjoys various comparative advantages in the form of favourable location and infrastructure, and the national availability of raw materials such as salt and natural gas. As the result of increasing competition from OPEC countries, where new productive capacity is being

[6] K. Vijlbrief, *Lange-termijn-vooruitzichten van de chemische industrie* (Long-term prospects for the chemical industry), internal WRR Working Document, August 1985.

built, European chemicals production is coming under pressure (admittedly still light) to re-orient its product-mix more towards high-technology chemical products and to rationalize its production process. This aspect also underlines the need for flexibility and adaptability. Although the need for selective European action by producers and governments is recognized, little has come of it in practice. National interests, individual company interests and differences of opinion with respect to the most suitable policies cut across a structured European approach. The Commission has not succeeded in initiating combined policies along these lines and decided in 1984 that it was up to industry itself - a clear indication of the inability of the Member States to co-ordinate their policies, while the Community lacks the necessary practical powers to break the impasse in this situation.

The electrical-engineering market is no less afflicted by these problems. Market relations in this branch of industry have likewise changed radically in recent decades as the result of rapid technological change (with far-reaching consequences for the product-mix and the organization of production) and the emergence of new, competing countries. In the Netherlands the Philips concern is easily the biggest producer, accounting for three-quarters of the ouput in this industry. Of total output, 70 per cent is sold abroad. The simple fact that pressure for further integration stems particularly from the Philips concern itself indicates the importance which this branch of industry attaches to a completed internal market [7].

The increased level of competition in the international market has made large-scale production, strict quality control and hence cost control of vital importance. With the acquisition of large foreign companies and the disposal of various small plants, especially in the Netherlands, production has come to be concentrated in large international centres of production. Philips' position in the Netherlands has increasingly become one of support in the fields of research and product and process development on behalf of production plants abroad. Philips is able to maintain its competitive position only by the relocation and concentration of production in markets larger than the Netherlands. Direct investment abroad to replace production and export from the Netherlands have made it possible to overcome the barriers resulting from a fragmented market. This applies to consumer electronics and to an even greater extent to professional electronics used in heavy electrical engineering and telecommunications equipment [8]. These important growth markets are confronted with strongly protectionist policies that render it essential to open foreign establishments and to work in harness with large foreign companies.

The success or failure in achieving a homogeneous internal market will be a matter of decisive importance in the enormous competitive struggle with Japan and the United States.

In summary, it is evident that, in general, Dutch industry is highly dependent on the internal Community market. This applies particularly to industries producing more advanced kinds of goods - and it is especially these industries that are hit by the market barriers discussed earlier in this chapter. The process of increasing multinationalization by means of direct investment abroad by companies in these industries and the pressure they have exerted from 'below' in favour of negative integration provide evidence of the economic necessity of such integration. With its very limited domestic market - something that is becoming an increasingly great comparative disadvantage - the Netherlands has a growing interest in that process.

---

[7] *Europe 1990. An Agenda for Action* (Dekker Plan); Eindhoven, NV Philips Gloeilampenfabrieken, 1985.

[8] W. Benink, *Lange-termijn vooruitzichten van de elektrotechnische industrie*, WRR Working Documents Series no. W9, The Hague, 1985.

3.3 The internal market in agricultural products

3.3.1 *Agricultural policy in historical perspective*

The price elasticity for agricultural products is low. The quantities offered throughout the year depend heavily on the weather and the crop growth cycle and it is difficult and expensive to maintain sufficient stockpiles to smooth out fluctuations in supply. This, added to the importance attached to an uninterrupted supply of food, obliged many national governments to conduct agricultural policies from the middle of the last century. In Western Europe, the agricultural recession at the end of the last century was an important motivation for intensifying these policies. Then, as now, the agricultural sector faced problems stemming from over-production, low prices, international market dislocation and the protection of domestic markets. Agriculture also ended up in a blind alley in the Netherlands because farmers lacked the power and resources to re-orient themselves; government policy was partly directed towards preventing the resultant pauperization of rural areas.

These arguments in favour of an agricultural policy still apply and the establishment of a European economic community would have had no chance of success without a common agricultural policy aimed, within the framework of a single common market, at the same goals traditionally pursued by national agricultural policies. Renationalization, in whatever form, of the agricultural policy as it has evolved within the Community, would therefore not solve the problems at issue but instead make the margins for a solution even narrower than they are.

The above explains the comparatively strong position of the agricultural sector and the repeated failure of efforts at reform. Thus there may be general agreement that expenditure on agriculture forms too large a proportion of the EC budget, but efforts to reduce it are consistently headed off successfully. The European Commission has been pressing for years for a reduction in cereal prices in order to bring them in line with world price levels. In its recent Green Paper, it indicates how difficult it is for the Council of Ministers to put such a policy into practice without supplementary income-support measures for farmers [9]. Efforts such as those of summer 1984 to place the agriculture ministers under the control of the ministers of foreign affairs and finance have so far not succeeded.

There are however three factors likely to result in a certain increase in the pressure on the agricultural political circuit [10].

In the first place employment in agriculture has been declining steadily, thus reducing the amount of political support that agricultural organizations are able to muster. In addition, other pressure groups and organizations have sprung up in recent decades that are also concerned with various aspects of agriculture and that wish to control agricultural production either directly or indirectly. Organizations representing the interests of consumers have been increasingly opposed to the considerable transfer of income from the consumer to the producer via high prices and, taking world prices as their cue, have been urging a cut in prices. Other organizations stress protection of the natural environment (which they see as being threatened by intensive farming), the protection of the natural landscape and more humane treatment of animals. This means that agricultural policy has ceased to be an

---

[9] European Community, *Perspectives for the Common Agricultural Policy. The Green Paper of the Commission*, Brussels, July 1985.

[10] S.L. Louwes, *Landbouwbeleid in de EG: het besluitvormingsproces* (Agricultural Policy in the EC: The Decision-Making Process), WRR Working Documents Series no. W11, The Hague, WRR, 1985.

exclusive province of agricultural organizations. The WRR recently devoted attention to these issues in its study of 'integrated agriculture' [11].

In the second place there is the financing problem. A high proportion of the Community's financial resources are taken up by the Common Agricultural Policy (CAP) and the continuing rise in expenditure on agriculture threatens to swallow up the Community's own resources. Whereas the budget for agricultural expenditure amounted in 1982 to 12 billion European units of account (ECU), this sum has since then risen to 21 billion ECU. Over the past ten years the real rise in agricultural expenditure has averaged around 7% a year. Apart from a brief interruption, the share of the European Agricultural Guidance and Guarantee Fund (EAGGF) in the Community's overall budget has stood at over 70% during the period 1977-1986. Willingness to allocate those resources to that end has, however, been declining, as there are so many other ways in which the money might be used. Hitherto the agriculture ministers have decided prices independently and the funds required have then been made available almost automatically, despite protests from the Commission and the European Parliament. In future it is planned that the volume of available funds for the CAP should be decided by a Council consisting of the Ministers of Foreign Affairs and of Finance, after which it is left to the Ministers of Agriculture to spend these funds. These arrangements would be subject to the general principle that expenditure on agriculture was not allowed to rise more rapidly than the total Community budget.

In the third place there is the limited absorption capacity of the world market for the ever-increasing volume of production. On the one hand this leads to ever-declining market prices and hence higher subsidies and costs, and on the other to strained relations with other exporters, such as the United States.

These three factors could affect the relative autonomy of the agricultural political circuit in the future, but for the present the political feasibility of solutions to these problems is to a large extent determined by the participants in that circuit.

In January 1962 the Council of Ministers adopted the principles of the common market organization, namely unity of markets, community preference and financial solidarity. In doing so a large proportion of the objectives was achieved. By replacing the national market organizations by a Community market organization, equalizing price levels in the Member States and abolishing trade barriers at internal borders, the unity of markets is promoted. Community preference embraces the preferential treatment of intra-Community trade over trade with non-EC countries by the adoption of common external protection. Financial solidarity is achieved by channelling all income and expenditure under the policy to the Community through the European Agricultural Guidance and Guarantee Fund.

The problems in EC agriculture, and which current policies are not doing enough to counter, may be classified under the three headings of overproduction, marginal areas and environment. These aspects are examined in the following section.

3.3.2 *Three central problems*

3.3.2.1 The surpluses problem

The aims of the Common Agricultural Policy are to increase agricultural productivity, to establish a politically acceptable standard of living for the

[11] W.J. van der Weijden et al., *Bouwstenen voor een geïntegreerde landbouw* (Building-Blocks for an Integrated Agriculture), WRR Preliminary and Background Studies Series no. V44, The Hague, Staatsuitgeverij, 1984.

farming community at politically acceptable prices to the consumer, and to stabilize the market.

In practice, however, priority has been given to two objectives: an acceptable income for remaining farmers and market stabilization. But even here the agricultural pricing policy is too undifferentiated an instrument to enable both these objectives to be pursued at once. This is reflected in the present policy of market support, which has been particularly concerned with keeping the prices of some important products at a sufficiently high level to avoid an undue squeeze on farm incomes. Of these so-called heavy market-regulation products, milk, sugar and wheat are of importance for the Netherlands.

The difficulty in simultaneously pursuing the objectives of market equilibrium and an adequate level of farm income lies in the fact that lower prices are required for the former than for the latter. One or the other has to be chosen: either one has a price level leading to market equilibrium but with a socially unacceptable level of income, cessation of farming and abandoning of marginal lands, or alternatively a socially acceptable price level coupled with surpluses and financing problems. And even if the situation should happen to be such that the requirement of market equilibrium and a reasonable level of farm income were both satisfied, it would rapidly be disrupted by technical progress, which ensures that supply will always outstrip the stagnating level of Community demand.

Technical progress in agriculture makes it possible to deliver an increasing volume of production at a less than commensurate factor input [12]. This is not just because fixed activities such as ploughing, sowing and harvesting remain at the same scale whatever the level of production, but also because the use of variable means of production becomes more efficient as yields per hectare rise. At each stage of technology, the appropriate factor mix can be determined better, the smaller the number of factors. In so far as agriculture, given the natural circumstances, the level of reclamation and the price level, is profitable, it will therefore always be commercially attractive to exploit the scope for increasing the yield per hectare afforded by technical advances. Even now it is clear that yields will continue to rise for years to come in the central areas of north-west Europe unless prices are depressed to the point that even land in these areas has to be taken out of production. In addition there are still many areas in Europe where agriculture is underdeveloped and where comparatively minor improvements in land-use would produce high gains in productivity. National structural policies aimed at the improvement of these lands could therefore give rise to substantial gains in agricultural productivity. In both private and national economic terms, exploiting these technical possibilities to increase output makes sense, and this latent potential hangs threateningly over any EC policy for the structural elimination of surpluses.

At the same time the domestic demand for agricultural products in the EC is stagnating not just because the income elasticity of that demand is comparatively low but also because the population of Europe has almost ceased to grow. This demand has been stimulated by the subsidized sale of part of the production of dairy products, wine and wheat in new market outlets, such as feeding milk-powder to calves, distilling wine into alcohol and using bread grains for cattlefeed. This has led to an increase in expenditure, but has done little to limit the surpluses. The main way of keeping down surpluses has lain in restricting imports from non-EC countries and boosting Community exports, thereby changing the Community's position in the world market. The supply of barley, wine, market poultry, eggs and dairy

[12] Dealt with in greater detail in C.T. de Wit, R. Rabbinge and H. Huisman, 'Agriculture and its Environment', to appear in *Agricultural Systems*, Barking (UK), Applied Science Publishers Ltd., 1986.

products has become more assured, and where the Community used to be a net importer its dependence has declined (e.g. maize) or switched into one of surplus (e.g. grains, sugar, beef and pork). In overall terms, the Community has changed from being a net importer into a net exporter of agricultural products.

As a result, an increasing gap has opened up between expenditure on restitutions and interventions and the revenue from import duties, which has had to be bridged by other means.

Apart from this budgetary problem, the surpluses have led to problems in the world market, where the Community has ceased to be a customer and instead become a major supplier. Competing suppliers consequently lost part of their markets and found themselves competing against the Community in their remaining markets. The greater the volume of production exported by the Community at subsidized prices, the stiffer the resistance on the part of other exporters, who suffer increasingly from the downward pressure on prices of higher EC exports. For the Community the greater pressure on world market prices has resulted in a sharp increase in the budgetary burden, since extra export restitutions are required in order to dispose of Community output at competitive prices and because export revenues fall. The Community is not just in danger of spoiling its own market but also elicits responses and retaliatory measures on the part of other countries. The United States, for example, can respond to extra sales of Community wheat by selling greater quantities of dairy products. The Dutch Agricultural Economics Research Institute has calculated that the disposal on the world market of the dairy stocks currently held in the United States would add some 500-850 ECU to the Community's present bill of approximately 5 billion ECU.

The problems are so great that physical limitations on production have had to be imposed. A quota system for beetsugar has been in existence since 1968. Similarly, maize sugars were brought under production quota arrangements in response to pressure from the sugar lobby, and are therefore produced only in limited quantities in Europe. Whether this can be continued given the international competitiveness of the sweetening-agent industry in the EC remains to be seen. Quota arrangements for milk were brought in in 1984 with the introduction of the super-levy, under which price support is restricted to a limited volume of production per farm or factory. Any milk produced over and above that level is subject to a prohibitive levy. The regulation has provisionally been instituted for a period of five years, but it would not appear that it can be abolished by 1989. Wheat is the next product in line for quantitative restrictions. At present the thinking is in terms of a co-responsibility levy, under which the costs of selling wheat in the world market would be charged to the farmer. This would relieve the burden on the EC budget, but would scarcely impose any restraint on overproduction.

3.3.2.2 The marginal areas

Physical yields have risen no less strongly in areas where they were traditionally high than in areas where yields used to be low. In other words, the monetary return has remained high where it used to be high, and low where it has always been low. Price pressure has not led to a declining growth in yields in the central areas of the EC but to difficulties in sustaining income levels in marginal areas. These are areas where farming no longer provides a sufficient source of income for farmers and their families and where the structural improvements needed to change the situation would be too radical and too costly.

A policy of seeking to control production by price adjustments would mean that land would have to be taken out of production especially in these areas. It is difficult to over-estimate the impact this would have in marginal regions, since in regions where agriculture remains profitable, yields are continuing to rise by an estimated 1.5% a year. On social and political grounds,

the large-scale abandonment of land would be unacceptable in marginal areas since the negative factors at issue tend not to be confined to the agricultural sector but to be universal in nature, so that compensation cannot be offered for the decline in agriculture.

There is, accordingly, a good deal of hidden unemployment in agriculture. In certain areas of southern Italy, for example, over 50 per cent of the farmers devote less than half a man-year to agricultural work but have no other employment. In some parts of Germany and France the situation is somewhat better, with opportunities to supplement farm income, but the burden this imposes on farming families should not be under-estimated. The accumulation of poor prospects produces great tensions and this the more so when prices come under pressure. This has for example been evident in West Germany, where the erosion of the monetary compensation amounts (see section 3.3.4) has been an extra factor squeezing rural incomes.

The recent enlargement of the Community by Spain and Portugal will increase the marginal land problem, on account of the scale of agriculture in those countries and the impact on other marginal Mediterranean regions of the Community. To a certain extent the structure of production in both Spain and Portugal is complementary to that of north-west Europe, but it also competes with that of southern France, southern Italy and Greece. Current producers of olive oil, wine and citrus fruits will see their position decline with the accession of these two countries. Therefore, it has been decided to implement integrated programmes for the Mediterranean regions of the Community (see section 3.3.2).

3.3.2.3 Environmental problems

The past and present changes in farm management and techniques also have a major impact on the environment, if only because two-third of Community land is used for agricultural production.

The principal problems under discussion are:

a. problems stemming from the use of chemicals in agriculture. These relate particularly to the pollution of ground and surface waters and the environment by minerals and nitrates from fertilizers and the impact on fauna and flora of pesticides;
b. problems stemming from intensive livestock farming, such as the conditions in which these animals are held, the stench created in the vicinity and the emission of ammonia into the atmosphere, which contributes significantly to air pollution. A major problem in certain areas is also the over-production of animal wastes;
c. problems arising from larger-scale farming and structural changes such as drainage, the filling in or re-alignment of ditches, construction and metalling of rural roads and land reconstruction. The result is a change in the historical landscape, a loss of diversity and damage to flora and fauna.

The nature of environmental problems varies from region to region. The ones referred to above are primarily under discussion in northern EC countries and arise as it were from affluence. In southern countries it is much more a matter of over-exploitation and erosion resulting from poverty.

In the Netherlands over-production of organic fertilizers is a source of particular concern. Especially in the East and the South, where the expansion of cattle farming and intensive livestock farming have gone hand in hand, the production of such fertilizers has grown so large that it can no longer be properly disposed of locally. Transport to other regions is not just expensive; it is also questionable whether the organic product that is supplied will be appreciated as fertilizer. The result has been over-fertilization, often ending up in dumping, with the disposal into the environment of excessive quantities of cadmium and copper besides phosphates and nitrogen. Strict measures are being devised to limit such pollution, but since these will result in the loss of jobs and income in agriculture itself as well as in an-

cillary and processing industries, their introduction will probably be slow.

Had the level of price support been lower than it has been under the EC agriculture policy, many of the land-improvement measures and other structural changes, and the resultant intensification of environmental problems, would not have occurred. Moreover, the Community provided investment grants and structural changes in enterprises were supported by official measures. The bulk of the changes are, however, irreversible, so that a restrictive price policy would not alleviate the environmental problems. The reverse could even apply, in that there are numerous marginal areas in Europe where farming is vital for the integrity of the social structure and for preserving the landscape and environment. It is precisely in these areas that price pressure would produce changes in agriculture, whereby it would be unable to fulfil these functions. Examples include the way in which agricultural lands have been abandoned or reafforested; the changing use of alpine meadows; and the enormous expansion of intensive livestock farming on small farms in the Netherlands.

3.3.3 *Lack of a common structural policy*

As early as 1960 the Commission argued that the accentuation of regional income inequalities resulting from the market and price policy would necessitate a common structural policy. It was also envisaged that a structural policy could achieve a more durable solution to the problem of market equilibrium and income support than was possible by means of market and price policy. Agricultural structural policy has, however, remained a national prerogative and has therefore almost inevitably aggravated the surplus problem at EC level. This effect is insufficiently compensated for by the improved co-ordination of production and demand which is also aimed at by structural policy. This forms one of the most graphic examples of a situation whereby negative integration – which particularly affects product markets – is much further advanced than positive integration, which would bear primarily on the factor markets.

Particular efforts are being made to set up EC programmes for the Mediterranean areas. These programmes comprise measures to improve the structure of production and processing and marketing, and measures to encourage conversion from surplus products to other crops. They are, first of all, designed to provide the Mediterranean areas in the Europe of the Ten with some compensation for the enlargement of the Community, besides which they have a more general structural improvement role. The latter is also the aim of the integrated programmes for Ireland, Northern Ireland, and the Outer Hebrides. Structural policy also covers the hill-farmers regulation, campaigns to improve the processing and marketing of agricultural products and guidelines for modernization, the cessation of farming, extension and retraining.

In its Green Paper the European Commission devotes considerable attention to the interaction between agriculture and the environment, but this element is not really taken into account in either structural policy or price and quota policy. When the structural policy was introduced the aim was to spend 25 per cent of the agriculture budget on this area. This figure was never realized; only about 5 per cent of the total community budget for agriculture is devoted to structural policy. The Council's decisions for the period 1985-1989 do not allow any budget increase, so that the funds will have to come from the Member States and present Community resources.

3.3.4 *The unfinished internal market*

One of the conditions for market unity is that prices should (apart from differences caused by quality, transport costs and the like) be equal throughout the Community. Equal prices do not, however, mean that incomes are all equally assured; other factors come into account, such as farm

size, soil quality, type of production and the relationship between investment and yield.

These inevitable income effects have meant that the unity of agricultural prices in the Community has never been achieved, as exemplified by the so-called monetary compensation amounts. MCAs were instituted in the 1970s to dampen the adverse effects of exchange rate movements on the agricultural sector, which were a source of concern to some of the Member States. Under the system, support prices were determined in European units of account (ECU). Conversion into national currencies was done on the basis of separately determined, representative or 'green' rates of exchange. The difference between these rates and the central exchange rates of the European Monetary System determined the need for and level of MCAs in intra-Community trade and trade with third countries. The central exchange rates themselves were not taken as the basis since any adjustments in them would have resulted in an excessively abrupt change in agricultural prices in the Member States.

In the short term, this was a practical solution; over the longer term, however, increasing drawbacks came to light, such as the disruption of free intra-trade, incomprehensible price decisions, distortions in the distribution of production and disguised renationalization of agriculture policies.

In 1984 a decision was taken that put an end to positive MCAs, when the agricultural unit of account ceased to be related to the ECU but was linked to the strongest currency in the Community. This means that when relative exchange rates change only negative MCAs arise, the abolition of which does not generally run into domestic political resistance, although the possibility has been created of granting national compensation as a transitional measure for the elimination of positive MCAs. Now that the 'green' ECU is linked to the strongest currency and therefore no longer corresponds with the 'real' ECU of the EMS, the average price level has come under upward pressure. In addition there will be domestic pressure in countries that originally had positive MCAs (especially West Germany) to allow nominal prices to rise in order to keep pace with cost trends. The Dutch Agricultural Economics Research Institute considers some form of renationalization of agricultural policy to be the only way of preventing the disruption of the internal market when prices fall [13]. Examples include the provision of income supplements for certain categories of producers, investment premiums and so on.

In working towards a common market it is also necessary to keep the remaining competitive conditions in the Member States as equal as possible. Important in this respect is the elimination of disguised national protection and marketing support by the abolition of traditional frontier barriers such as import duties, quota regulations and the like, as discussed earlier in relation to industrial products. In addition there are numerous technical trade barriers. These include:

a. national regulations relating to market control, such as marketing boards in the United Kingdom or the minimum prices for packaged wholemilk and bread in the Netherlands.
b. Import regulations for agricultural products, such as veterinary and phytosanitary requirements, that vary considerably from country to country. In practice these requirements act as obstacles only occasionally, but it is possible for them to be manipulated for other purposes. Either inadvertently or with deliberate intent, requirements with respect to quality, composition, packaging and labelling can interfere with internal commercial traffic and hence with the pattern of competition. Familiar examples include the rules for beer production in West Germany, food additive regulations and rules for the production of sterilized milk in the United Kingdom.

[13] Meester and Strijker, *op. cit.*, pp. 158-159.

c. Discriminatory excises on alcoholic beverages to the benefit of national beverages, especially in Denmark, France, Italy and the United Kingdom.
d. Provision of subsidies or tax concessions to bring down the cost of the means of production, such as subsidies on animal fodder and reduced transport rates in France, or the (until recently) reduced gas prices for horticulture in the Netherlands.
e. Indirect support in the form of infrastructural facilities, market facilities, extension, research and education.
f. Special tax arrangements for agricultural profits and incomes resulting from different internal economic regulations in the Member States. In West Germany and France, for example, substantial number of farmers are exempted from having to keep books.

It is difficult to obtain an accurate insight into the scale of these types of trade barriers in agriculture, which tend to be a politically sensitive issue. The European Commission annually compiles a survey of national aids to agriculture, but has so far refrained from publishing it. The Commission's Green Paper simply notes that national aids are known to represent a large amount. The Commission observes that these national measures not only result in discrimination and distortion of competition, but encourage more surplus production. The Commission also notes the risk of 'self-defence' measures at national frontiers for the protection of national agricultural markets, with a tendency towards renationalization.

3.3.5 *Different views of Member States*

In the case of agriculture there are again major differences of view between France, West Germany and the United Kingdom. The French saw a good opportunity in the EEC for providing the French agricultural sector, which was undergoing a process of drastic modernization, with a helping hand by opening up the European market for French agricultural products. In return for this advantage the French were prepared to give the Federal Republic room to export industrial products. The French protectionist tradition in relation to agriculture – stemming partly from security considerations – did, however, need to be maintained. This led to the system of stable prices and marketing guarantees and to the establishment of a preferential trading system within the borders of the EC.

This rejection in principle of the liberal market mechanism fits in with French economic-policy traditions. Secondly, the CAP guarantees France's export position in the EC market, and thirdly, part of the burden of agricultural policy is deflected onto the Community. For these reasons the French government is defending the broad lines of the current CAP. Nevertheless, the French attitude towards the CAP is more complex than these arguments might suggest. French farmers are less satisfied with EC policy, which has brought price stability and guaranteed sales, but on account of the limited efficiency of French agriculture, no real prosperity.

Under the government of President Giscard d'Estaing, official policy was directed towards maintaining the *acquis* or established benefits of the CAP while accepting a certain decline in price for particular products as positive monetary compensation amounts (MCAs) were eliminated. Under President Mitterrand the policy has been continued, but two elements have been added: an EC task in world food supply and the notion of a policy of differentiated prices depending on the quotas delivered by individual farms. The renationalization of agricultural policy is no more in prospect in France than in the other Member States, and it is in general denied that there are fundamental problems with the CAP. Instead the problem is held to be one of various imperfections in existing policy, such as the free importation of grain substitutes and vegetable fats, oils and proteins. Similarly the increasing exports to non-EC countries is not a problem in French eyes, but simply a contribution to the world food supply. To the other Member States it

would appear that the French are anxious to keep exporting their agricultural surpluses by means of high subsidies. Although the French have always taken the view that they would not be able to accept the EC without the CAP in its present form, a certain degree of flexibility is discernible as regards measures to reduce the budgetary burden of the CAP.

West Germany initially viewed the Common Agricultural Policy as a means of persuading France to accept an open internal market for industrial products as part of a package deal. The CAP was seen as an investment on behalf of industrial expansion and economic growth, which would also be to the benefit of the West German agricultural sector. West German governments have therefore in principle favoured reform of the CAP that would serve to reduce the German contribution to it and that would produce a switch towards a freer, less regulated market for agricultural products. The CAP has, however, also had an effect on West German agriculture, which has taken advantage of the assured market and high prices and developed into an efficient industry. The West German agricultural sector accordingly has little interest in reforming the CAP, except in so far as it might otherwise collapse under its own weight.

Despite the increasing pressure from non-agricultural interests for a price policy more in conformity with market principles, the CAP remains an area of EC policy in which Bonn is unlikely to make efforts in the near future to re-organize the market along the West German lines of a social market economy. This may be because the scales still tip agriculture's way for electoral reasons, but it could also be that the inclination to retain the existing policy derives partly from the fact it stimulates West German agriculture to expand its output, in which case the problem of relatively large net contribution to the EC budget would be automatically solved.

The existing regulations are an issue for the United Kingdom. Although there is an efficient agricultural sector, the high degree of urbanization and traditional trading links with the Commonwealth mean that so few agricultural products are manufactured that it has to import a substantial part of its requirements. Because of this structural position as a net importer, there is a large budgetary transfer to the EC, while considerably less flows back to the Exchequer from the EC – the basis of the long-standing British complaint about unequal or unfair treatment.

The fact that both the United Kingdom and the Federal Republic are net importers has led to certain similarities in approach and action between the various groupings in the two countries. Agriculture is less of a political force in the United Kingdom than it is in West Germany, however, although the National Farmers Union is a vigorous advocate of the CAP. As in West Germany, the United Kingdom is trying to reduce the net disadvantage by expanding its own agricultural sector. A suitable means to this end have been the monetary compensation amounts (MCAs) paid since 1980, as sterling has risen against the ECU. Particularly in relation to the long-term maintenance of the system of MCAs, this is a striking attitude because it is at variance with the traditional aim for the lowest possible food prices and because it also involves an extra short-term flow of funds to Brussels. The present British government would appear to be more positive towards the CAP than it makes out, for some aspects of the policy are clearly to the benefit of British agriculture.

3.3.6 *The position of Dutch agriculture*

The position of Dutch agriculture in the EC is characterized by the comparatively large share of products without CAP regulation, such as potatoes and decorative plants, a substantial proportion of which is exported. These products account for 19% of Dutch production, as against a Community average of 9%. By contrast products subject to strict market regulation,

such as dairy products, cereals and sugar, account for 45% of Dutch production, compared with 60% in the Community as a whole (with dairy products alone accounting for 28%). Dairy farming depends heavily on pasture management, but the export of other animal products depends significantly on the procurement of concentrates in the world market, whereas in other exporting Member States animal husbandry relies far more on homegrown food. This difference is related to the location of Dutch agriculture along the axis between the port of Rotterdam and the Ruhr. In addition the fodder industry is to a significant extent based on imports of primary agricultural products that are processed in the Netherlands into final products, such as margarine, and then sold in the internal market or outside the Community.

As a result of the growing surpluses of products with a CAP regime and the growing level of self-sufficiency in the Community, the position of Dutch agriculture, ancillary industry and the fodder industry has come under greater pressure. The super-levy on milk imposes a ceiling on national levels of production, so that Dutch farmers are unable to exploit their lead any further. The loss of this position could be accelerated by the imposition of a levy at the external border on grain substitutes and by a relatively high internal price for cereals. Dutch farms could then lose their comparative advantage to farms closer to or located in cereal-growing areas such as North France. Certain secondary comparative advantages have, however, been built up in the meantime, such as expertise, processing industries and an alert marketing organization, which could help stem the tide.

At the same time it needs to be borne in mind that intensive livestock farming in the Netherlands runs up against a number of environmental constraints. There are widespread indications that this branch of industry has exceeded its natural limits, so that it may be asked to what extent a stubborn defence of its position in the EC context is desirable.

An active debate is currently under way in the Community with respect to cereals, of which there are rapidly accumulating surpluses. Although comparatively few cereals are grown in the Netherlands, the proposed policies could have a marked effect on the Dutch situation. A reduction in prices would make the production of non-CAP products such as potatoes more attractive and hence place prices for these commodities under pressure. The example of sugar-beet reveals that quantitative restrictions do not prevent technical innovation, so that a steadily smaller area would be required for the production of a limited quantity of cereals. This will release land for non-CAP products, so that here too prices will come under pressure, thereby increasing the pressure to extend CAP regimes to other commodities. Restricting imports of grain-substitutes for animal fodder would offer only temporary relief for over-production, apart from which such a policy would provoke retaliatory measures (see section 3.3.2.1) on the same scale as continued and increasing export restitutions.

The Netherlands will be affected by the accession of Spain and Portugal in the fields of horticulture, cereals and meat. Little direct competition between Dutch horticulture and that in the acceding countries is to be expected, however, since the production cycles overlap only partially and the most important markets for quality commodities are located in north-west Europe. The Netherlands has a major interest in preventing the system of guaranteed prices from being extended in this direction, since this would encourage other producers to increase their production capacity and to develop their marketing organization. Current price levels for cereals and meat in the acceding countries are below those in the Community, and cereal production, in particular, is expected to increase. Higher cereal prices will, however, lead to higher animal feedstuffs prices, and meat production - currently more or less in balance with internal demand - will probably fall. Spain protects its own dairy production, with higher milk prices than those in the Community. That protection will disappear in the EC, with a probable shift in production towards meat and cereals. This could be to the benefit of the Netherlands.

4.1 Free intra-trade

The reasons for assigning priority to the further completion of the internal market for industrial products were discussed in preceding chapters. Partly at the urging of large business interests, a consensus has been developing among the Member States about the need for such completion. A similar consensus about a European industrial policy, which would follow the finishing of the internal market for industrial goods, may be harder to achieve. For the latter, as the cornerstone for intensified policy co-ordination, requires no radical shifts in the allocation of powers between the Community and the Member States. Considerable results can be obtained by means of comparatively small changes in the manageability and effectiveness of Community powers.

On 14 June 1985 the European Commission published its White Paper on finishing the internal market. This included a list of some three hundred decisions that would need to be taken over the next six years [1]. Because this White Paper is expected to form the focus for discussion in the Council of Ministers, it will be used as a frame of reference in this section in setting out the various types of solutions for promoting free intra-trade. The following aspects are dealt with below:

- technical barriers;
- fiscal barriers;
- exchange controls;
- commercial policy restrictions;
- public procurement;
- the lack of a common transport market.

4.1.1 *Technical barriers*

In its White Paper the Commission acknowledges that the completion of the internal market is primarily a matter of policy and administrative co-ordination.

It is a *policy* co-ordination problem because the removal of actual and potential barriers to inter-state commercial traffic requires the mutual co-ordination of numerous national market interventions taken on socio-economic, health, safety or environmental grounds, and still increasing in frequency and scope. The mutual co-ordination of all these regulations and measures exceeds the decision-taking capacity of the national governments; the Community decision-making apparatus, which is much more laborious again, is totally unequipped for the purpose.

In the case of regulations concerned with health, safety and environmental protection, the Commission would now like to confine harmonization to the establishment of essential qualitative criteria. The Community decision-making process between the Commission, Parliament and the Council would then be concentrated on key policy issues. If the elaboration of basic qualitative criteria into technical specifications could be left to the existing European Standards bodies, this would prevent the necessary harmonization activities of the Community from being blocked by differences in opinion over purely technical details [2]. The aim expressed in the White Paper of

[1] Completing the Internal Market, *op. cit.*
[2] *Ibid.*, p. 19-20.

reducing the burden of substantive policy co-ordination, especially in relation to harmonizing the various requirements that products must satisfy, is therefore an obvious course of action.

The second element of the Commission's proposals, namely to move away from harmonization in the case of national regulations outside the 'sensitive' areas of safety, health and environment and instead to make it obligatory for the Member States to accept one another's standards, has the attraction of fitting in with the Court of Justice's rulings on Article 30 of the EEC Treaty [3]. A further advantage of the Commission's proposal is that the legal uncertainty currently still associated with these (inevitably) casuistic rulings would be removed. It needs however to be borne in mind that this would be a second-choice solution which, while it would remove trading barriers, could also serve to perpetuate distortions in competition and would moreover create the risk of a race towards the minimum acceptable level of regulation. Where necessary, therefore, qualitative minimum standards should be laid down, to which national legislators are tied (i.e. co-ordination through subordination) [4].

The determination of basic Community standards and the mutual recognition of national standards would, however, only partly solve the substantive policy problem of technical trade barriers. Physical barriers to inter-state trade often persist because the Member States do not recognize one another's supervision of these standards. This means that goods in intra-Community trade are often subject to more checks than goods remaining in the domestic market. Obligatory mutual recognition of administrative procedures, coupled with an expansion of control requirements in the country of origin, would afford the type of solution examined earlier. Strengthening the co-operation between administrative and legal bodies also, however, forms a logical response on the part of the national authorities to the fact that the behaviour of market actors is increasingly taking place at a supranational level. Such co-operation from above can be imposed by the Community; it can also arise spontaneously between the various Member States (i.e. co-operative co-operation).

The Commission correctly points out in its White Paper that the burden of policy co-ordination for the Community is added to considerably if national administrations unilaterally introduce new standards without taking account of the Community dimensions. Its proposal that the requirement for prior notification of new national standards currently applying to technical regulations be extended to all product regulations *could* contribute towards an improvement in policy co-ordination at Community level [5]. This form of co-ordination through subordination of national legislators to Community regulations can, it should be noted, substantially limit national legislators in the actual administration of their powers.

The Commission does not confine itself in its White Paper to proposals for improving policy co-ordination but also examines the problem of *administrative* co-ordination. The major weak spots are related to the procedurally laborious system of decision-making to which implementation of the co-ordination and harmonization provisions in the EEC Treaty is subject and to the inadequate ability of the Community – and especially the Com-

---

[3] Cf. *inter alia*, CJEC, 20 February 1979, 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein*, ECR (1979), 649;
CJEC, 16 December 1980, 27/80, *Officier van Justitie v. A.A. Fietje*, ECR (1980), 3839;
CJEC, 26 June 1980, *Proceedings against Gilti and Andres*, ECR (1980), 2071, 2078.

[4] Cf. conference of the representatives of the governments of the Member States, *Single European Act*, conf.-REGM 4/86, Brussels, 27 January 1986, Article 18, supplementing the EEC Treaty with Article 100A.
Article 100A, paragraph 3, states:
'The Commission, in its proposals in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection'.

[5] Council Directive 83/189/EEC of 28 March 1983, OJ no. L109/8 of 26 April 1983.

mission - to supervise the observance of Community regulations at national level and to identify difficulties in good time.

The unanimity rule of Article 100 EEC acts as a substantial legal obstacle to the Community's decision-making capacity; and the actual application of this requirement has become a major political obstacle. Amendment of the Treaty on this point could be effective provided such amendment was an expression of the desire on the part of the Member States to fall in line with majority opinion in the decision-making process [6]. If this step cannot be taken - and it demands a particular willingness to make concessions on the part of the newer Member States - the Member States will have to be prepared to reduce Council decision-making on the harmonization of national legislation and regulations to the stipulation of broad political guidelines.

Put differently, this means that where the decision-making capacity is limited, the solution of the resultant problems in the field of administrative co-ordination may also take the form of a reduction in the decision-making burden. If it were necessary to follow this path - and in its policy proposals the Commission appears to have this in mind - its recommendation for the harmonization of national regulations to be delegated to it to a greater extent than at present becomes a matter of essential importance. Delegation is possible under Article 155 EEC and, where it has taken place, has proved satisfactory [7]. Technical problems that can strain decision-making in the Council are often readily dealt with in a less politically charged atmosphere.

Finally, if the Member States really consider the finishing of the internal market to be necessary, the Commission's desire to broaden its supervisory powers and potential would appear inescapable. The gap between the Community legislator and national administrative practice is great - a gap accentuated by the absence of any real sanctions against minor or even more serious failures by national governments to observe Community regulations. And if a sense of suspicion should grow among the Member States that the others were not taking Community regulations seriously, this would in turn affect decision-making in the Council. An internal market finished in a *de jure* overall sense but not in *de facto* national terms, can never be the home market for European industry that it needs.

From a national vantage point, the Commission's proposals appear particularly far-reaching because they have been made at Community level. If this fact is over-looked, the proposals will be seen to fit in very well with the solutions being sought at national level to the social, economic and administrative problems created by the volume of regulation in the welfare state. Another attractive aspect is that the considerable expenditure in terms of administrative and decision-making expenses that each of the Member States is obliged to bear in preparing the rules at issue can be appreciably reduced. In this light the proposals deserve to be approached positively, even if they are not always particularly orthodox.

4.1.2 *Fiscal barriers*

The side-by-side existence of differing national indirect tax and excise regimes acts as a serious obstacle to intra-Community trade. The removal of these obstacles is in the first place a *problem of competences*: the reason for the slow progress may be traced to the anxiety with which national tax legislators and administrators safeguard their powers.

The problems that arise with the removal of tax frontiers illustrate just how much the Community/Member State relationship differs from that be-

---

[6] *Single European Act*, op. cit., Article 18.

[7] The *Single European Act*, op. cit., Article 10, provides for Article 145 EEC to be supplemented, although this would not amount to any fundamental extension of the scope for delegation already provided for under Article 155 EEC.

tween a federal government and the states. In the former case, the Community's interest in the structure and level of taxes is of subordinate importance; in the latter the federal government is directly concerned with revenues [8]. The Community must, as it were, make inroads into the powers that national tax legislators have traditionally exercised unchallenged; whereas in a federal system, it is the federal legislature that has traditionally had powers in these fields. In the EC, Community regulations compel numerous adjustments (varying from state to state) to be made to national taxation structures with (again) varying social and economic consequences, while in a federal system, the consequences in individual states of new federal regulations are more similar.

The tax base for indirect taxes and excises and the tax rates reflect (so it is argued) fundamental social and political preferences in the Member States concerning the nature of the tax system. Therefore, it is held, the potential margins within which approximation is possible are extremely limited.

This argument is less strong than it seems. In practice the indirect-tax bases and rates in the Member States frequently turn out to be determined by comparatively incidental motives of a budgetary nature. The argument also fails to explain why the total burden of indirect taxes and excises among the older Member States ranges only from roughly 8.5% to approximately 11.5% of GDP. If the more recent members are added, the spread becomes considerably greater, from around 8.5% to over 17%.

If the total yield of indirect taxation is subdivided into VAT and excises, the spread in VAT proves to be considerably less than that for the economically less important excises. As a percentage of GDP, the lowest yield for VAT in 1982 was 5.22% (in the United Kingdom) and the highest 9.84% (in Denmark), while the average for the Community was 7.05%. For excises the yield ranged from 2.22% (France) to 8.19% (Ireland), with a Community average of 3.63% [9]. Although the spread between the various countries might not appear insuperable, the gap conceals substantial differences in the tax base and tax rates.

In its White Paper the Commission puts forward a step-by-step approach for eliminating the frontier barriers and distortions arising from the inequalities in indirect taxes and excises. Taking into account the differences between the Community structure and that of federal states, however, these proposals would appear to be on the ambitious side.

The most important objection to the proposals for the further approximation of VAT is the tight time-schedule. For the 'old Six', it might just be feasible, provided they were prepared to commit themselves politically and in policy terms to the not insubstantial implications that these proposals would have for their domestic tax structures. In the case of the United Kingdom, Ireland and Denmark, the approximation of VAT is not insuperable in a technical or economic sense, but it is questionable whether they are currently able or willing to embark on such an operation politically. For Greece the transition to a VAT system has already proved an almost insurmountable step, and it remains to be seen when it will be prepared and able to take this step. Although the introduction of the VAT system is not straightforward for the new Member States, the problems are not in themselves insuperable, as Spain has demonstrated, having already introduced the system upon accession.

Matters are somewhat different in relation to the approximation of excises. Although the total yield from excises does not vary greatly in the older Member States, the composition of excises differs considerably. In certain instances - such as the introduction of excises on wine in France and Italy - approximation could run into stiff opposition. For the United Kingdom,

---

[8] Cf. *inter alia* Articles 104-109 of the West German *Grundgesetz*.

[9] *White Paper*, op. cit., pp. 48-51.

Ireland and Denmark, where excises are a good deal higher than elsewhere in the Community, approximation would create considerable tax and budgetary problems. Solving these might well prove insuperable, since the high levies on alcohol and tobacco in these countries is a matter of definite political choice.

The Commission's proposals would therefore appear, at least for the time being, to exceed the capacity for adjustment of the most recent members of the Community, and it is clear that second-choice solutions will have to be found to the elimination of fiscal frontiers. These will need to be by way of compromises to the Commission's proposals, concentrating especially on the frontier barriers that most impede the functioning of the customs union.

In moving towards the approximation of VAT, the introduction of differing time-frames would enable the most significant fiscal barriers in a large and economically the most integrated section of the customs union to be removed in a comparatively brief space of time. By granting those Member States currently incapable of joining in for technical or political reasons a longer transitional period, the risk of impasses in Council decision-making would be reduced, while at the same time safeguarding the ultimate objective. Differentiation over time need not, however, extend to all the Commission's proposals for approximation; it might for example be useful if all the Member States now levying VAT could be subjected to the Commission's 'standstill' provision with respect to the rate structure and the rates themselves.

It is questionable whether the efforts that would be needed to move towards the approximation of excises on alcohol and tobacco would justify the meagre results likely to be obtained, given the political resistance in the Member States. If these excises were to be left out of account for the time being, there would then remain the excise on mineral oil products, the differences in which are such a handicap for road transport within the Community. Approximation would not just eliminate frontier controls; it is also one of the obstacles in the way of a common transport market.

4.1.3 *Exchange controls*

The elimination of exchange restrictions and controls in intra-Community traffic is a *policy co-ordination* problem that does not lend itself to complete solution within the existing framework of powers under the EEC Treaty. This means that, for the present, it is largely up to Member States themselves to take steps to limit the use of exchange restrictions in internal traffic. The fact that the co-ordination of macro-economic policies cannot be imposed from above need not prevent co-operative co-ordination, as the example of the Netherlands, Belgium, Luxembourg and the Federal Republic shows. Following its sobering experiences with its out-of-step socio-economic policies in 1981 and 1982, France too is displaying greater preparedness towards co-ordination. The increasing inter-dependence of these economies (as manifest in the ever-increasing level of cross-border traffic in goods and factors of production) renders unilateral resort to the exchange-rate instruments increasingly unattractive. In these circumstances more extensive convergence of the objective of economic policy becomes an urgent necessity. The comparative stability of exchange rates under the EMS in recent years and the converging rates of inflation within the Community point to a growing appreciation of the need for 'spontaneous' policy convergence.

The Community is able to encourage this process of co-operative co-operation by means of information, consultation and support mechanism, but it cannot compel it [10]. The only 'hard' powers the Community has are

---

[10] P. Praet and M. van den Abeele, 'Les contraintes de la politique économique dans la CEE', in: *Discipline communautaire et politiques conomiques nationales*; Institut d'études européennes, Université libre de Bruxelles, Deventer, Kluwer Law and Taxation Publishers.
B. Molitor, 'Vorbemerkung zu den Artikelen 103 bis 109', in H. von der Groeben *et al.*, *Kommentar zum EWG-Vertrag*, op. cit., Vol. 1, pp. 1794-1797.

the safeguard provisions in Articles 108 and 109 EEC, resort to which is subject to Commission consent. All the exchange restrictions and controls in intra-Community traffic derive from these provisions. Tightening the control over the (further) use of these provisions could help exert additional pressure on the Member States to work towards the necessary co-ordination of macro-economic and monetary policies. If a Member State is provided with balance of payments support under Articles 108 and 109 EEC, conditions may be attached with respect to the economic and monetary policies required to be conducted. To date, however, the Community has tended to be rather cautious in applying this co-ordination instrument [11].

Compared with fully-fledged federal and confederal systems, the Community, at the present state of integration, presides over only third and fourth choice possibilities for preserving the unity of the market against monetary disturbances arising from disparities in national economic and monetary policies.

The intensity of negative integration is an important stimulatory factor in the spontaneous mutual co-ordination of macro-economic and monetary policy by Member States. That intensity does, however, vary appreciably among the Member States, for which reason continuing differentation would appear inevitable. The turbulent history of Community exchange-rate arrangements is primarily attributable to the differences in economic circumstances in the Member States – which are certain to persist in an enlarged Community.

Against this background any pronouncements about the timing of the elimination of currency restrictions and controls in intra-Community trade must necessarily be plucked out of the air. All one can say is that restrictions between the 'older' Member States are likely to become less frequent and radical as they strengthen their co-operative policy co-ordination.

4.1.4 *Commercial policy restrictions*

The obstacles to intra-Community traffic arising under the safeguard clauses of Article 115 EEC primarily amount to *policy co-ordination* problems, rather than deficiencies in the assignment of powers between the Community and the Member States. The solution here lies in closing the existing gaps in the common commercial policy and in a more restrictive application of Article 115 EEC.

The existing gaps in the common commercial policy as it were create the demand on the part of the Member States for the application of Article 115 EEC. By way of an initial step, therefore, the Community should in future refrain from taking any commercial policy measures towards third countries (e.g. import quotas) that are confined to one or a few Member States. The same applies to commercial and raw materials agreements which, while concluded by the Community, apply differently to each of the Member States. The practice of opening up Community quotas and then dividing them among the Member States forms an example. Such measures are not infrequently introduced in response to pressure from the Member States, which are anxious to share the 'hardship' for 'their' trade and industry of opening up Community quotas as widely as possible. In doing so, any fissiparous effects on the internal market are taken for granted. Apart from restrictions on intra-Community trade, this approach has serious consequences for the allocation of factors of production within the Community, because it tends to protect weak enterprises in one Member State and strong ones in another. If priority is to be assigned to the finishing of the internal market, the Community, supported by the Member States, will have to put an end to these practices.

Such practices could moreover be made a good deal less attractive for the

[11] M. Zuleeg, in: *Kommentar zum EWG-Vertrag*, ibid., pp. 1859-1879.

individual Member States if the Commission were to apply Article 115 EEC more sparingly. Contrary to popular assumption and contrary also to what one might suspect from the way in which this article is currently applied, this provision should be neither interpreted nor applied to subject intra-Cummunity trade to commercial policy fragmentation in the trade with third countries [12]. Put baldly, the division of Community quotas among the Member States does not provide them with any entitlement to the application of Article 115 EEC. The Commission can and must continually balance the unity and effective operation of the internal market against the interests of the Member States. As progress is made towards finishing the internal market, more weight will have to be assigned to the first of these considerations than at present.

The second step concerns the extension of the common commercial policy to newer forms of policies, such as the technical co-operation agreements with Eastern bloc countries, which have an effect on the volume and composition of the goods flows in and out of the customs union. When such measures are entered into bilaterally by the Member States, they can give rise to the application of safeguard measures in intra-trade. Taking various rulings handed down by the Court of Justice as its basis, the Commission could resist unilateral steps by Member States to conclude agreements of this kind [13].

The third step - ending the so-called residual import quotas maintained by some of the Member States - is more difficult, since these quotas derive from agreements that the Member States in question are not at liberty to terminate unilaterally. Agreements of this kind apply especially to commerce with state-trading nations. These agreements will therefore have to expire before the Community can step in, with the further complication that most Eastern bloc nations do not recognize the Community as a formal trading partner. In so far as this means that the Member States will themselves have to assume formal negotiating powers, they will have to be increasingly careful to make sure that the substance of any such agreements does not conflict with Community interests, such as the unity of the internal market. This requires in particular the solution of *administrative co-ordination* problems.

Administrative co-ordination problems may also arise if import quotasa are in future applied on a Community-wide basis only, since enforcement and control are the exclusive province of the national customs administrations. In order to apply such quotas responsibly, new and close forms of co-operation will have to be built up among these administrations and between them and the responsible Commission agencies.

To sum up, the elimination of commercial policy barriers in intra-Community trade will require a more radical, practical centralization of the *de jure* powers that the Community already possesses. The scope for differentiation in this area is limited, because the obstacles to intra-Community trade arise precisely from the existing differentiation of Community regulations in the individual Member States.

The administrative co-ordination problems created by a Community commercial policy will essentially have to be solved by co-operative co-ordination. This would be a second choice [14]; the first choice - the com-

---

[12] Cf. *inter alia*: CJEC, 15 December 1976, 41/76, *Suzanne Criel, née Donckerwolcke and Henri Schou v. Procureur de la République au Tribunal de Grande Instance, Lille, and Director General of Customs*, ECR (1976), 1921;
CJEC, 30 November 1977, 52/77, *Leonce Cayrol v. Giovanni Rivoira and Figli*, ECR (1977), 2261;
Conclusions of Advocate General P. VerLoren van Themaat, 2 October 1985, in cases 59/84, *Tezi Textiel BV v. Commission of the European Communities*, and 242/84, *Tezi Textiel BV v. Minister of Economic Affairs*.

[13] Cf. *inter alia* CJEC, 26 April 1977, Opinion 1/76, ECR (1977), 741.
CJEC, Opinion 1/78, ECR (1979), 2871.

[14] Council Regulation of 19 May 1981, no. 1468/81, OJ L144/1 of 2 June 1981.

munalization of customs administrations - would require too extensive a transfer of powers to the Community and would run into insurmountable opposition.

As noted, the goal of eliminating commercial policy barriers to intra-Community trade and the differentiation of the common commercial policy are inherently at variance. A certain differentiation in time will, however, be difficult to avoid in the case of Greece, Spain and Portugal. Given the adjustment problems that the previously heavily protected industry in these countries has already run into, abrupt exposure to a Community-wide commercial policy with respect to third countries would be asking too much. Like the other members of the Community before them, these countries will need a substantial transitional period in order to adjust to the consequences of completely unrestricted intra-trade in industrial products. For these countries the Commission's target date of 1992 is decidedly ambitious and, given the disproportionately severe consequences, not fully justifiable.

4.1.5 *Public procurement*

One of the most serious barriers in a quantitative sense to a genuine common market arises from the role of national administrations in awarding contracts and the procurement of goods and services. The elimination of these barriers is essentially an *administrative co-ordination* problem.

The legal situation is clear: under Articles 30 and 59 of the EEC Treaty, the Member States are not permitted to discriminate according to nationality, domicile or origin when procuring goods and services in the market. Generally, however, failure to observe these provisions attracts no penalties. The Commission is simply unable to supervise the countless transactions undertaken in the market by national administrations. The markets within which national administrations tend to operate, usually lack transparency and are known only to insiders. In the comparatively rare instances where foreign bidders are informed about proposed government purchases and contracts, there is little they can do legally if they discover that the government in question is discriminating in favour of national suppliers. Private legal actions are lengthy and expensive; and even if litigation should be successful, there is no guarantee of obtaining the order. Apart from this financial barrier, there is the further psychological barrier for a potential foreign bidder of reluctance to institute proceedings against a potentially important client.

For the Member States the legal risks arising from infringements of Articles 30 and 59 EEC are not, therefore, great, while preferential treatment for national firms in government purchases and contracts can generally count on firm public and political support at home.

To date the Commission has pursued two main paths in trying to break open national markets for public procurement:

- enlarging the transparency of these markets by laying down regulations for the procedures that have to be followed by governments awarding contracts or making purchases, and by rendering the prior publication of proposed transactions compulsory;
- widening the ability to supervise government market behaviour [15].

The results of these efforts have been disappointing. As the Commission's own figures show, only 25% of total public purchases and contracts are

---

[15] Council Directives:
71/304/EEC of 26 July 1971, OJ L185/1 of 16 August 1971.
71/305/EEC of 26 July 1971, OJ L185/5 of 16 August 1971.
72/277/EEC of 26 July 1972, OJ L176/12 of 3 August 1972.
70/32/EEC of 17 December 1969, OJ L13/1 of 19 January 1970.
77/62/EEC of 21 December 1976, OJ L13/1 of 15 January 1977.

undertaken in line with the provisions of co-ordination Directives 71/305 and 77/62/EEC. Three-quarters of the total market is, in practice, closed off to cross-border competition. In the case of transactions that are properly published, it remains unknown whether and to what extent discriminatory practices nevertheless occur.

The Commission would like to continue following the path of greater transparency and policing compliance, except more radically [16]. Given past experience it is questionable whether this path will in itself lead to the desired opening up of markets. As time has gone by it has become reasonably clear that the beneficial effect of negative-integration provisions such as Articles 30 and 59 EEC depends critically on the ability of private individuals to institute proceedings where these provisions are not directly applied. The enlargement of market transparency will only have practical consequences if actors in the market are simultaneously provided with inexpensive and simple means of taking legal action against discriminatory government practices in the field of public procurement, for example entitlement to appeal to an administrative tribunal against alleged discrimination, with the possible annulment or suspension of the award in question.

The introduction of such arrangements would require a radical harmonization of national regulations on public purchases and contracts. In order to support the action taken by private individuals, the Commission's administrative ability independently to monitor practices in this field in the Member States needs to be broadened. Where Member States are obliged under Article 5 EEC to abstain from any measures likely to jeopardize the attainment of the objectives of the Treaty and are bound to facilitate the achievement of the Community's aims, the legal arguments against an enlargement of the Commission's supervisory powers are certainly not strong. Nor are the practical arguments, since, in their dealings with one another, the Member States find themselves in a prisoners' dilemma. Taking the line that everyone else is doing the same, they persist in their traditional behaviour, despite knowing that public funds are being squandered and that the potential advantages of an effective common market are not being exploited. The way of breaking out of this dilemma lies in strengthening the private scope for enforcement and the Commission's supervisory powers.

The above has not taken into account the selective orders and contracts awarded by national authorities as part of official technological and industrial renewal policies. Virtually all national governments regard such orders as one of their most important instruments in this ares of policy. Such contracts - which may lead to public purchases - potentially come under the scope of Articles 30 and 59 and, in so far as there is an element of state aid, that of Articles 92-94 EEC. The policies that the Member States conduct with such orders are therefore bound to certain legal limits. In so far as they lead to a compartmentalized internal market, the instrumental use by the Member States of these orders for policy purposes will have to be adapted or cut back.

Unlike 'ordinary' public purchases and contracts, however, this is not just an administrative co-ordination problem of enforcing the Treaty; there is also a large substantive *policy co-ordination* element. The lack of co-ordination between these types of intervention can, in the first place, lead to expensive duplication of industrial research and development work in the Community and, in the second place, to distortions in the allocation of factors of production - which in turn provide the Member States with cause to screen off their domestic markets. Clearly, if special stimulatory measures fail to produce the same result as the measures taken by other governments, there is a considerable temptation to provide the home-grown plant with special protection. In these circumstances, policy competition between the Member States results in the fragmentation (or re-fragmentation) of the in-

[16] *White Paper*, op. cit., pp. 23-24.

ternal market. In theory, tightening up the application of Articles 30, 59 and 92 EEC on orders designed to stimulate new industrial developments and applications could render this policy instrument legally unmanageable at national level. Such a development would, however, adversely affect European industry in the common market, since industry depends for the enlargement of its competitiveness on government orders to stimulate innovation. In the framework of industrial policy in the strict sense, therefore, it may be necessary for national governments not only to continue stimulate developments, but also to co-ordinate their actions. The negative integration provided for under Articles 30, 50 and 92 EEC will therefore need to be supplemented by positive integration, under which national interventions are bound to substantive Community co-ordination directives. This issue, which also has consequences for the allocation of powers between the Community and the Member States, will be examined further in section 4.4.

Discriminatory behaviour by governments in their capacity as actors in the market is prohibited by a number of key provisions in the Treaty, which occupy a central place in the *acquis* or attainments of the Community. The substantive anti-discrimination provisions of Articles 30 and 59 EEC also apply fully to the newest Member States [17]. As such there is no room for policy differentiation in the measures proposed by the Commission to enforce greater compliance with the provisions of these articles.

4.1.6 *Movement of services*

In its White Paper the Commission devotes attention to the further realization of the free movement of services within the Community [18]. There are a number of good reasons for doing so.

In the first place, as described in chapter 1, there is the intrinsic importance of the services sector for economic growth and employment within the Community. Secondly there are the increasingly close links between industrial activities and the movement of industrial goods on the one hand and service activities and their cross-border movement on the other, a complementarity especially pronounced in the more advanced industrial sectors, which depend on the existence of a diversified and highly developed services sector.

In the third place there is the development of all sorts of new cross-border forms of services reflecting the advance in information technology, such as audiovisual services, information and data processing services and computerized marketing and distribution services. In recent judgments handed down by the Court of Justice, the movement of services has increasingly been assessed on the same footing as that of goods [19].

Fourthly, the interests of the Member States in the internal markets for services and industrial products are not wholly identical. Comparatively speaking, peripheral Member States such as the United Kingdom, Denmark, Greece and the Netherlands have a greater interest in the realization of the internal market for services than in that for industrial products. For more centrally located countries such as West Germany and France the reverse applies. Because a trade-off of interests would be possible, the simultaneous realization of both markets might run into fewer political obstacles than a successive realization (cf. section 4.5.2).

With respect to services in finance and insurance which, while more traditional, are indispensable for the effective functioning of an economy, it is important that the wave of deregulation in the United States and in other traditional financial centres should be accepted as both an incontrovertible

---

[17] Feenstra and Mortelmans, *Gedifferentieerde integratie*, op. cit., p. 16.

[18] *White Paper*, op. cit., pp. 26-31.

[19] CJEC, 18 March 1980, 62/79, *Procureur du Roi v. J.V.C. Debauve et al.*, ECR (1980), 833. CJEC, 18 March 1980, 62/79, *Coditel et al. v. S.d. Ciné Vog Films et al.*, ECR (1980), 881. CJEC, 17 December 1981, 279/80, A.J. Webb, ECR (1981), 3305.

fact and a challenge [20]. In the United Kingdom and more recently also France and the Netherlands, this challenge has been met by a notable liberalization of the money and capital markets [21]. In so far as this example has not yet been followed in other Member States, the competitive position of national financial institutions in those countries will compel adjustment. Under these circumstances the prospects for the liberalization of the intra-Community market for such services has become considerably more favourable. The strategy recommended in this respect by the Commission in its White Paper contains two at first sight attractive elements:

a. the mutual recognition - where necessary after the minimum harmonization of surveillance standards - of national standards for the admission and management principles of banks and insurance firms;
b. the mutual recognition of the national administrative controls over the admission and operating procedures of such institutions [22].

This approach has the major advantage that it demands a minimum of harmonization from above, while nevertheless maintaining the powers of the national administrations as far as possible and building on the collaboration between the various national supervisory agencies as it has evolved over time. The most important objections towards this approach stem primarily from the banking and insurance system in those Member States that have traditionally applied a strict admissions and supervisory regime. Now that they are at risk of losing the protection afforded by strict national regulation, these firms, fearing as they do the competition from institutions used to operating in a more competitive environment, are seeking to block progress towards a single internal market in which such services could be provided under comparatively liberal conditions. Such considerations are, for example, behind the somewhat timorous attitude adopted by West Germany. As the country with the leading interest in the completion of the internal market for industrial products, West Germany will, however, find it difficult to maintain its standpoint; both the importance for the Community of the rapid introduction of a competitive financial sector in the interests of the industrial sector and the changes taking place in the international market for financial and related services would militate against such a stance. Financial services will be no more able to stand aside from structural changes in the world market than has industry.

In the case of the commercial liberal professions, such as solicitors, accountants, independent business consultants and architects, the pressure to establish a liberal market for services would at first sight appear less urgent. The introduction of the necessary co-ordination and recognition directives has run into substantial delays [23]. The lack of flexibility towards such harmonization on the part of the Member States derives partly from the resistance of national interest groups with or without a legal basis. Wherever the professions are exercised in a guild-like structure, the right of free establishment and freedom to provide services in a competitive environment presents a threat. Such a restrictive approach is, however, likely to be self-destructive in the long term, since firms operating at a supra-national level will seek the expertise they need on the basis of their own quality standards, thereby placing individual national interest groups in a competitive position. In addition, leading practitioners in these fields familiar with international conditions and requirements have proved adroit in exploiting opportunities for cross-border activities.

The internationalization of large commercially-oriented legal firms, consultancy offices and firms of accountants indicates that where there's a will,

---

[20] L. Cohen-Tanugi, *Le déroit sans l'Etat, Sur la démocratie en France et Amérique*; Paris, Presses Universitaires de France, 1985.

[21] Ministry of Finance, Budget estimates, Parliamentary Proceedings, Lower House, 1985-1986 session, 19 200, Chapter IX B, no. 2, p. 15.

[22] *White Paper*, op. cit., p. 28.

[23] P. Troberg, in: *Kommentar zum EWG-Vertrag*, op. cit., pp. 688-691.

there's a way. National professional groups sheltering behind national establishment regulations, and seeking to protect their pitch, see these developments as threatening a substantial and growing share of their potential turnover.

For Member States heavily oriented towards the international traffic in goods and services such as Belgium, the Netherlands and the United Kingdom, it makes sense to press for the liberalization of the right of establishment and the movement of services when it comes to the liberal professions. The decisive factor in this respect should be the evidence that the quality of the expertise on offer is ultimately more important than the minimum trading standards laid down in national legislation.

In the case of services arising from new technologies, the classic methods for instituting an internal market do not suffice, since the trans-frontier movement of these services concerns the transfer of signals rather than of persons receiving or supplying services. The prime precondition for the establishment of an internal market is the formation of a common telecommunications system with common, or at least mutually compatible, standards. Trans-frontier information flows under this system present the legislature at both national and Community level with numerous unresolved issues, to which a response is urgently required.

In its White Paper the Commission observes correctly that information itself and information services are becoming more and more widely traded and valuable commodities, and in many respects primary resources for industry and commerce. Opening the market – and keeping it open – for this commodity is therefore of vital importance, especially where the functioning of other markets depends on the availability of information. The economic arguments for treating information as a 'commodity' are comparatively strong, and the analogy gradually gaining in force in the rulings handed down by the Court of Justice between the free movement of goods and that of information services accordingly corresponds to economic reality.

While the Court's jurisprudence may be able partly to assure the free movement of information, it leaves at least three problems open to which the Community legislature will have to find a solution. The unique properties of information as a commodity demand a special private law regime for the rights that are involved – a problem broadly corresponding with that for intellectual and industrial property rights. It is most important that a Community solution to this issue be sought from the outset. The potential market-fragmentation effects of separate and divergent national statutory regulations governing the rights to be attached to information are not to be under-estimated; the consequences for the unity and functioning of the internal market could prove more serious than those of the side-by-side existence of differing systems for industrial property rights. The Commission and national legislatures will therefore need to be particularly vigilant. The storage, processing and transmission of information touch upon the public order of the Member States in a number of respects. The protection of privacy has received the most attention in this respect, but is by no means the sole aspect. Comprehensive national systems of public-law legislation are likely to arise with respect to the commodity of 'information' which could act as a major obstacle to inter-state traffic if not properly co-ordinated from the outset. Pre-emptive harmonization of legislation would therefore appear required in order to avoid unnecessary and harmful restrictions on the intra-Community movement of information. On this point the attention currently being devoted to the setting up of a common telecommunications network with common standards contrasts sharply with the lack of attention being paid to the obstacles arising from disparities in national legislation.

The major economic importance of trans-frontier information flows, both within and between undertakings, means that such traffic forms a logical basis for national measures taken on economic grounds. In so far as such measures affect inter-state traffic in information they would appear to be at variance with the principles expressed in the Court's jurisprudence with

respect to the free movement of goods and that of services [24]. If it should prove in due course that the EEC Treaty affords an inadequate basis for guaranteeing that freedom, appropriate arrangements will need to be made as a matter of urgency.

4.1.7 *Lack of a common transport market*

The stagnation in the introduction of a common transport market and policy is a *policy co-ordination* problem of the first order which forms a serious brake on inter-state commercial traffic. Because transport policy is regarded as a separate part of the integration process, the complementary function of the transport services in relation to other economic activities receives too little recognition. The result is that the Community is handicapped by a sub-optimal set of transport services and a transport network that is not adapted to the state of the goods market. It is urgently necessary for transport policy to be lifted out of its isolation and to be co-ordinated at Community level with policies to strengthen the internal market.

It is also a policy co-ordination problem in a reverse sense. Cross-border traffic is obstructed in all sorts of ways by disparities between national regulations based on something other than transport policy considerations. Thus the lack of common excises on motor fuels leads to border checks in which the content of fuel tanks is inspected. Differences in national regulations concerning weight and the technical specifications with which vehicles must comply impose a burden on industry (in relation to the composition and utilization of the vehicle fleet) and cause obstacles at the border. Because national legislators are primarily concerned with the consequences of regulations for domestic transport, only slightly concerned about the consequences for cross-border transport and not at all about the consequences for inter-state commercial traffic, comparatively innocent-looking national regulations can have far-reaching consequences for inter-state trade flows.

Is there no common transport policy because there is no common transport market, or is there no common transport market because there is no common transport policy? At first sight it is extraordinary that the lack of an answer to this chicken-and-egg problem should have blocked the implementation of the transport Title of the EEC Treaty for over twenty-five years, particularly in view of the fact that the same question has hardly been put in relation to the socially and economically much more complicated common agricultural policy. On closer examination it is less odd, because there is no fundamental difference of opinion among the Member States concerning the necessity of an agricultural pricing policy and the associated regulation of the product markets. This had the result that a common agricultural market and the institution of a common agricultural policy were indissolubly linked from the inception. The transport market was different: there were and still are fundamental differences of view between the Member States on the need for transport policies to control and distribute capacity within the Community and for the associated regulation of prices [25]. The lack of agreement on the desirability of regulating the transport market impedes liberalization, especially of intra-Community road transport. The differences of opinion centre particularly on the desired regulation of road haulage and the competitiveness of the road haulage industry with rail transport. In doing so two separate questions are consistently mixed up with each other:

---

[24] A.Th.S. Leenen, 'Recente ontwikkelingen op het terrein van de vrijheid van vestiging en de vrijheid van dienstverlening binnen de EEG' (Recent Developments in the Field of Freedom of Establishment and the Free Movement of Services in the EEC), *Sociaal-Economische Wetgeving*, September 1985, Vol. 33, no. 9, p. 543.

[25] P. VerLoren van Themaat, in: *Inleiding tot het recht van de Europese Gemeenschappen*, op. cit., pp. 425-434.
J. Erdmenger, in: *Kommentar zum EWG-Vertrag*, op. cit., pp. 8-17.

- does the transport sector have special features that set it apart from other forms of economic activity to the extent that special market regulation is required?
- does the competitiveness of the various transport sectors need to be officially regulated?

Generally speaking the tendency to answer the first question in the affirmative rises as the interests of commerce and industry in transport are stressed. If, on the other hand, transport is seen more as a service industry complementing other forms of economic activity, that is required to combine a high standard of provision with the lowest possible costs, many of the arguments for the separate regulation of the transport market lapse.

The answer to the second question is determined mainly by historical and strategic factors: the larger the scale of the rail network - and the more it is in government hands - the greater the tendency to protect this form of transport, which has traditionally been treated as a public utility. Especially in the larger Member States, strategic motives play a large part in the maintenance of the railway net, economically obsolete though it may be in many respects.

If a good deal of weight is attached within the common market for industrial products to the optimal allocation of products and factors of production, regulation to protect the transport market can, even if formulated and managed at Community level, create serious drawbacks. Transport users find themselves burdened and hindered by any form of protective transport regime. In the common market, where industry already has to cope with a good deal more government-induced rigidities than its American and Japanese counterparts, this constitutes an argument in favour of the most liberal form of regulation of the Community transport market. If this path is followed, regulation of the transport market then lapses as an instrument for influencing the degree of competitiveness in the various transport sectors. For the Community decision-making process on transport policy this would be a blessing, for the views and interests of the Member States diverge so appreciably that any common transport market regime designed to influence the pattern of competition permanently would become unmanageable.

The question then remains whether the regulation of relative competitiveness in the various transport sectors should form a part of a common - liberalizing - transport policy that did not seek to control capacity or prices. In so far as setting the level of specific taxes bearing on the various transport industries in the Community is concerned, the answer is in the affirmative. In other words, by the global assignment of infrastructural costs to the various transport sectors, unjust advantages of road or water transport over rail transport could to a certain extent be compensated for. A common transport policy which, at the expense of other transport sectors, additionally favoured Member States which, on domestic political grounds, had an antiquated rail network, would strain the solidarity of the other Member States and bear disproportionately on other industries.

More important for the future than the distribution of infrastructural costs over the various transport sectors is the question of the geographical distribution of the yield from taxes on transport and the costs of the infrastructure. In an integrated Community transport market there are bound to be growing disparities between such yields and costs. If the taxes are collected by the carriers' land of establishment, and the carriers to a significant extent make use of other Member States' infrastructure, the yields would accrue in one place and the costs in another. Particular losers in such a situation would be the 'transit' countries such as West Germany and, in the future, France. Reflecting this, support has been voiced for transport taxes to be levied on the territorial principle, i.e. payment in the place of travel. The objections to such a system are self-evident, in that it would serve to consolidate inter-state trading barriers. The introduction of an equalization

system would appear the inevitable price that Member States with a comparatively strong international transport sector will have to pay for the further liberalization of the transport market.

The *policy co-ordination* problems of a common transport policy have been outlined above in broad terms only. Their potential scale calls for very modest policies, based more on the standardization of qualitative and financial constraints than on seeking to influence the availability of various types of transport. Even so, the ensuing problems will tax the decision-making capacity of the Council to the limit.

When it comes to the Council, *administrative co-ordination* problems are also encountered. The lack of progress towards integrating the transport sector is partly due to the compartmentalization of decision-making in the Council, with transport ministers scoring points off each other while colleagues in different Councils interested in the finishing of the internal market make high-sounding pronouncements about the desirability of such integration. It makes little sense - and indeed only causes consistent disappointment - if one Council issues rulings that are blocked in another, owing to lack of co-ordination at Council level. An administrative co-ordination problem also arises because the unexpected introduction of national requirements can obstruct cross-border transport and hence intra-Community trade in industrial products. As such there would be merit in subjecting national regulations of this kind to the same sort of notification and 'cooling-off' procedures recently proposed by the Commission for national product specifications.

A cautious approach towards the practical elaboration of a common transport policy relates not just to the substantive policy aspects but also takes account of the fact that the Community's decision-making structure is not really up to the demands that intensive market regulation would impose.

The Community's powers in the field of transport are what is known as competing competences. The Member States remain empowered to regulate their own transport markets so long and in so far as the Community has not made use of its powers. The introduction of a common transport market, with a more or less far-reaching common transport policy, would inevitably involve a narrowing of the margins within which the Member States were at liberty to introduce national transport-policy measures. Seen in this light the common transport issue is also a *problem of competences.*

The problem extends well beyond transport policy as such. The transport sector is subject to all sorts of constraints with respect to public order, (traffic) safety, environmental protection and industrial safety. The nature and rigour of these constraints to a significant extent determine the cost structure of this labour-intensive sector and need to be harmonized if trans-frontier transport in the Community is to be liberalized and the degree of competitiveness within the various parts of the common transport market to be placed on a roughly equal footing. For this reason it will be necessary for the Community broadly to assume the powers of the Member States to regulate the parameters within which transport largely operates. This will certainly have consequences for the Dutch government's intentions for road-haulage policy to be conducted primarily by the supervision of qualitative parameters [26].

The margins that the Community legislature will in future permit national legislators in this field will not depend solely on the Member States represented in the Council. If the Court of Justice should by analogy extend its rulings on the freedom of services to transport, any form of substantive

[26] Ministry of Transport and Public Works, Budget estimates, Parliamentary Proceedings, Lower House, 1985-1986 session, 19 200, Chapter XII, no. 2, p. 56.

national discrimination would become incompatible with Community law.

The recent judgement by the Court of Justice finding the Council at fault for not instituting freedom of transport within the Community, has lifted the common transport policy into a higher gear [27]. Although the Court of Justice assigns the Council a considerable degree of freedom in instituting a common transport policy, the above indicates that it has to operate within narrow legal margins. As intensive market regulation of transport over-taxes the policy and decision-making capacity of the Community, the far-reaching liberalization of cross-border traffic would appear to be an almost inescapable choice.

4.2 The common commercial policy and industrial policy

In the case of the common commercial policy and also competition and industrial policy, no recent documents exist in which the Commission sets out its future strategy with a precision and cogency similar to that of its White Paper on completing the internal market. The treatment of these subjects accordingly differs in nature from the preceding section, and the recommendations are unrelated to any Commission proposals.

The links between commercial policy and a Community-wide industrial policy are sensitive in policy, political and legal terms.

In policy terms, the further communalization of commercial policy is a precondition for the application of commercial policy instruments for industrial policy ends. If this condition is not satisfied, interventions favouring industry in one Member State can damage industry in other Member States, thereby creating a need for safeguard measures in inter-state commercial traffic which would render a common industrial policy impossible. The links between the communalization of commercial policy for internal market purposes and that for industrial policy ends should not therefore be overlooked. In order to ensure the necessary degree of policy co-ordination in this field, the practice on the part of Member States of introducing open or disguised commercial policy measures in the interests of their own industrial policies will henceforth have to cease [28].

Politically, the application of commercial policy instruments for industrial policy purposes by the Community is problematical. Whereas such measures enjoy automatic acceptance in certain Member States with a mercantilist/interventionist tradition, such as France or Greece, in others, such as the United Kingdom, the Netherlands, Denmark and, since the Second World War, West Germany, they arouse an equal degree of suspicion. When it comes to policy formulation and implementation at Community level, these far-reaching differences in attitude will make it difficult to make choices. Whatever compromise is eventually arrived at is bound to come under domestic pressure.

From a legal viewpoint the Community, as the legal successor to the Member States, is tied to the GATT. In many respects, this basic commercial-policy document imposes strict normative parameters on Community autonomy. These parameters do not just impose limitations on the application of national commercial policy instruments, such as customs tariffs, quotas and anti-dumping measures, but also on the application of typical industrial policy instruments, such as state aids and selective public procurement discriminating against third countries [29]. Even if there is no resort to the classical protective instruments of tariffs and quotas, the application of restrictive or stimulatory commercial policy measures in the interests of industrial policy is just as much a form of protection.

---

[27] CJEC, 22 May 1985, 13/83, *European Parliament v. Council of the European Communities* (as yet unpublished).

[28] Pelkmans, *De interne markt voor industriële produkten*, op. cit., pp. 44-46 and 194-198.

[29] J. Steenbergen, G. de Clerq and R. Foqué, *Change and Adjustment: External Relations and Industrial Policy of the EC*, Deventer 1983, pp. 189-205.

Commercial policy is not just a matter of weighing up the political and legal possibilities and constraints. As with any policy, commercial policy is determined by the available arsenal of instruments and its usability. *Internally* in the Community, the degree of usability is chiefly determined by the extent to which there is agreement among the Member States on the objectives of commercial policy, while *externally* it depends on whether the commercial policy measures in question are autonomous or conventional. In the former case, the Community can act unilaterally, in the latter it has binding obligations under bilateral and multilateral agreements.

The arsenal of instruments may be divided into two main categories:

a. measures to protect exports;
b. measures to restrict the flow of imports [30].

Although the stress has traditionally lain on the latter category, the first category is just as important at a time of renewed protectionism. For Western Europe, short of raw materials and dependent on the export of end products as it is, keeping markets open in third countries is a matter of vital importance. If only for this reason Community commercial policy will have to continue to respect GATT liberalization commitments and to exert pressure for their observance by third countries. In so far as the so-called new commercial policy instrument, agreed after protracted discussion in September 1984, can be deployed to this end, it *could* serve important industrial policy interests [31]. The situation changes, however, if the instrument is used to retaliate against non-compliant third countries, which can lead to the escalation of (protective) commercial policy measures on both sides. With this in mind a number of Member States (including the Netherlands) have been reserved about the new commercial policy instrument. Their fear is not unfounded, for cautious application of this instrument could leave international trading relations undisturbed, whereas ill-advised use could be disruptive and adversely affect the interests of large sections of European industry.

In the case of measures to restrict imports a distinction should be drawn between:

a. measures applied ad hoc in response to representations from individual companies or organizations, such as the anti-dumping measures and the measures against subsidized exports to the Community [32];
b. measures of a temporary nature applied when products are imported from third countries in such quantities or at such a price as to constitute a serious threat to Community producers of similar or competing goods.

Safeguard measures of the latter kind are designed to provide threatened Community commercial interests with a temporary breathing space in which to re-group [33]. In most cases, the Community is obliged to consult the third countries concerned and to apply temporary import restrictions non-selectively. Although numerous products have been the subject of safeguard

---

[30] M.C.E.J. Bronckers, B.H. ter Kuile and J. Steenbergen, 'Ondernemingen en handelspolitieke instrumenten' (Companies and Commercial Policy Instruments), introductory papers for the Netherlands Association for European Law, *Sociaal-Economische Wetgeving*, October 1985, Vol. 33 no. 10.
M.C.E.J. Bronckers, 'Ondernemingen en handelspolitieke instrumenten: bescherming van export' (Companies and Commercial Policy Instruments: Protection of Exports), p. 602;
B.H. ter Kuile, 'Ondernemingen en handelspolitieke instrumenten: aspecten van rechtsbescherming' (Companies and Commercial Policy Instruments: Aspects of Legal Protection), p. 637;
J. Steenbergen, 'Ondernemingen en handelspolitieke instrumenten: bescherming tegen import' (Companies and Commercial Policy Instruments: Protection against Imports), p. 624.

[31] Council Regulation 2641/84 EEC, OJ L252/1. A detailed commentary on this regulation may be found in: J.H.J. Bourgeois and P. Laurent, 'Le nouvel instrument de politique commerciale: un pas en avant vers l'élimination des obstacles aux changes internationaux', 21 *Rev. trim. dr. eur.*, 1985, pp. 41-98.
Council Regulation of 17 September 1984 no. 2641/84, OJ L252/1 of 20 September 1984.

[32] Council Regulation no. 2176/84, OJ 201/84 of 30 July 1984.

[33] Council Regulation of 5 February 1982, no. 288/82, OJ L35/1 of 9 February 1982.

measures in recent years; the application of this instrument is increasingly by-passed by informal bilateral agreements between the Community, individual Member States and third countries. These arrangements, arrived at separately from international trading agreements, such as so-called orderly market agreements and voluntary export restraints, are not without objection, because they undermine the already vulnerable regulation under international law of commercial traffic and create a kind of 'shadow' law with major uncertainties both for intra-Community relations and for private commerce [34];

c. measures involving a re-structuring of the common customs tariff.

In relation to most trading partners, the margins for measures of this kind are determined by the GATT. In principle the adjustment of tariffs for given products or categories of products should not lead to an increase in the average tariff level, and each increase must be compensated for by an equivalent decrease in tariffs elsewhere. The international sensitivity towards a re-structuring of the tariff for certain products and the repercussions this could have for other products, mean that measures of this kind cannot be taken on an ad hoc basis to deal with temporary problems.

Reviewing the arsenal of measures against imports, one might be led to conclude that the danger of neo-protectionist trading policies – at least on the part of the Community – was not so great, but appearances can deceive. Highly specific government measures, such as those against dumping or export subsidies, can, if applied on any sort of scale, quickly lead to a complex and confusing network of tariffs and restrictions on imports. They then become a source of uncertainty in international trade and can, moreover, lead to retaliatory measures in third countries, in which case their effect can well be more damaging than a general increase in tariffs. In order to avoid this unintended structural effect, the Community will need to exercise self-restraint with anti-dumping measures, especially in relation to non-EEC signatories of the GATT [35].

Temporary safeguard measures are indeed comparatively innocent and can help avoid structural trading tensions if they remain temporary. If, however, they become more permanent, they can let loose an avalanche of protectionist measures. This risk provides cause for self-restraint by the Community, if only to protect the interests of the Community export industry. The same applies to so-called voluntary import restraints, the application of which often results in the displacement of export pressures and fresh forms of retaliation.

The objection to a realignment of the common customs tariff is that this inherently structural instrument is exposed to *ad hoc* lobbying by industries with political access. If such pressure succeeds, the instrument becomes unsuited for structural purposes.

If, in the light of the problems of the common commercial policy outlined above, the scope is reviewed for using commercial policy instruments for industrial policy ends, it is difficult to avoid the conclusion that caution is advised – especially in the interests of European industry – even if the Member States were to be of one mind. Solutions to the Community's industrial policy will have to take place within a comparatively open and fixed commercial policy framework that permits open and honest competition, safeguards access to export markets and continues to exert the necessary pressure on European industry to adjust rapidly and properly to changes in the world market. Commercial policy is inherently unsuitable and too vulnerable to be used to compensate European industry for the imperfec-

[34] Pelkmans, *op. cit.*, p. 44.
[35] See footnote 30, Steenbergen, *op. cit.*, p. 64.

tions of the common market arising from divergent national policies. The potential for the common commercial policy to buttress industrial policy is, therefore, limited. Needless to say the Community must be able to defend itself against unjustified import/export practices on the part of third countries, such as differential market access for new products, but application of the relevant instruments will need to find its justification in those practices, rather than in (inherently unrelated) motivations of an industrial policy nature [36].

The substantive connection between commercial policy and industrial policy is perhaps at its strongest when it comes to a possible structural adjustment of the common customs tariff, when industrial policy motives can – provided they are of a strategic and structural nature – also play a role. This condition calls, however, for great care and caution in practice.

The suggested cautious application of commercial policy instruments for industrial policy ends has two ancillary benefits: it can be exercised within the existing assignment of powers between the Member States and the Community, and it does not create insuperable administrative co-ordination problems for either policy formulation or implementation.

In the discussion on finishing the internal market, it was noted that the further communalization of commercial policy, as the last stage in the customs union, does not lend itself to differentiated application. The same applies to the use of commercial policy instruments for industrial policy ends.

4.3 Competition policy

The problem of co-ordinating competition policy at Community level is intimately related to that of free intra-Community trade and that of industrial policy in the strict sense. The principal competition policy problems will be examined in the light of these inter-connections.

In general it may be said that where competition policy helps to maintain and strengthen the internal market it also indirectly serves industrial policy ends. The gradual convergence of systemic distortions, the harmonization of company law, the further completion of the internal markets for services and capital, the prevention of market-sharing civil-law cartels and the reduction in specific distortions arising from inequalities in national legislation, are collectively directed toward the creation of an internal market in which market actors are able to respond properly to technological and economic developments.

Unity of and equality within the internal market are not, however, sufficient, since the way in which the Community and the Member States organize the home market can markedly affect the entrepreneurial climate. Depending on their form, content and elaboration, official regulations can either hold back or stimulate new research and development and the introduction of technically and commercially superior procedures; they can encourage or inhibit market integration; they can make it difficult for enterprises to respond in time to new developments, or can create the appropriate climate. As American and Japanese experience indicates, this is a factor of vital importance that deserves to be taken into account in its own right by the Council of Ministers with respect to the harmonization of legislation. In working towards the completion of the internal market, the Community legislature will have to pay greater attention to the quality and cohesion of the legal parameters of public order within which the market mechanism is required to work.

The demands this will impose on the Community legislature are not to be underestimated, particularly since legislators in most Member States tend to

---

[36] Pelkmans, *op. cit.*, p. 198.

display little concern about the restrictions imposed by regulative policy choices. Because the EEC Treaty specified that certain regulative interrelationships have to be respected – the so-called four or five freedoms for market subjects, and the requirement for effective and undistorted competition – the Community legislature is in a somewhat better initial position than most national governments. The maintenance and strengthening of these interrelationships in the further completion of the internal market and competition policy will have to form the basis for any selective technological or industrial policies of or within the Community.

It is frequently argued that there are tensions between competition policy and industrial policy, and that competition policy should therefore be relaxed. Where, however, these tensions derive from conflicts between Community competition policy and national industrial or technological policies, caution is in order [37]; such relaxation can lead to disguised renationalization of competition policy and thus cut across the further completion of the internal market. In this respect otherwise constructive and well-intentioned initiatives by the Member States can sometimes prove at variance with one another.

Where there is said to be friction between competition policy and industrial policy, this nearly always amounts to tensions between certain elements of competition policy and specific behaviour on the part of enterprises or individual acts of intervention by Member States. The most important friction occurs in relation to restrictive practices policies and policies towards public enterprises and on state aids. These are examined in turn below.

4.3.1 *Systemic distortions*

As a result of historically and politically determined differences of view into the regulation of society, the size and role of government, social equality and security, major differences in the conditions of competition are likely to persist in national Community markets for some time. These differences find expression in the structure and detailed provisions of the tax system, the use of that system for other than purely fiscal purposes (e.g. income redistribution) and, perhaps most graphically of all, in the differing national social security systems.

In consequence the overall tax burdens on economic activities in the market sector within the Community vary, creating considerable inequalities in the burdens bearing on labour and capital in individual countries.

The authors of the EEC Treaty assumed that these systemic distortions between the various national economies would not constitute an overriding obstacle to the establishment of a common market. The effects of these distortions would, it was held, be neutralized by exchange rate relativities (and adjustments) and by differences in wage and price levels [38]. This theory, which was based on research carried out by the Dutch economist Tinbergen for the then High Authority of the ECSC, has been confirmed in practice: the common market does not as such demand the abolition of systemic distortions. However, if the Member States should lose control over the exchange rate instruments (for example if the EMS should evolve into a currency union), and if they ceased to be able to exert direct influence over

---

[37] In its memorandum 'De interne markt: versterking van de technologische basis van de Gemeenschap' (The internal market: strengthening the technological basis of the Community) submitted to the Chairman of the Commission on 5 March 1985, the Dutch Government would not appear to recognize this risk sufficiently when it states: 'The Dutch government would urge the Commission to draw up a state aid code for research and development in the very near future indicating which forms of support would be acceptable. More generally it would urge that the Commission makes *wide use of the Community safeguard provisions and state aid codes* (WRR's italics). This would provide companies *and the Member States* (WRR'italics) with greater certainty and resourcefulness in developing new policy plans consistent with the aim of strengthening the competitiveness of European industry and promoting the development of new technologies'.

[38] P.H. Spark et al., Rapport des Chefs de délégation des Ministres étrangés; Brussels 1956.

relative wage and price levels in the national context, they might then be faced with the necessity of redressing not the effects of the systemic distortions but the distortions themselves.

Since the EEC Treaty came into force the Member States have repeatedly sought to neutralize the effects of existing systemic distortions by exchange rate adjustments and wage and price controls. In addition, the disparities responsible for systemic distortions between the socio-economic and political systems as they were in 1958 have grown less in the 'old Six'. France and Italy extended their social security legislation during this period, thereby closing the gap on the other Member States. The government share in national income rose in all Member States, the greatest relative increases being recorded where the initial share was lowest. A certain 'spontaneous' convergence is also evident during this period in relation to the economic policy instruments used, although differences in macro-economic priorities remained a latent source of friction, especially in the monetary field (in Italy and France economic growth enjoyed priority, whereas in West Germany and to a somewhat lesser extent the Netherlands, the stress lay on stability). In recent years there has been a comparable process of parallel development in the efforts of various Member States to reduce the public sector share in national income, reform the social security system and re-order economic priorities. Whether these parallel trends will also lead to a gradual convergence remains to be seen. Consistent convergence of this kind will have to form one of the conditions for making genuine progress to develop the EMS into a monetary union, for the Member States can only be expected to give up their most important instrument for the neutralization of systemic distortions if those distortions have proven controllable within the monetary union. As long as that is not the case, the weakest states in executive terms run particular socio-economic risks as regards investment and employment.

In an internal market consisting of twelve national markets, systemic distortions are bound to continue to reflect differences in the socio-economic and political climate, since these issues go to the heart of national sovereignty and are to a certain extent an expression of national identity. The Community lacks either the powers or the means of doing much about this from above, so that the Community and its internal market are likely to continue to differ fundamentally from large federal entities such as the United States, Canada and Australia and the internal markets in those systems.

Given the marked geographical differences in capital and labour productivity within the Community, it is also highly questionable whether it is desirable to aim at equalizing the overall tax burden on economic activities. The experience with regional economic policies in most of the Member States suggests that the geographical distribution of economic activities becomes more difficult as the tax burden bearing on those activities becomes more equal.

Eliminating the causes of these systemic distortions within the internal market will inevitably rest primarily on voluntary, co-operative co-ordination on the part of the Member States and on a gradual reduction of disparities in prosperity and income levels. Some form of differentiated integration is therefore probable. Making use of its 'light' co-ordinating powers, such as information and co-ordination, the Community has some ability to steer these processes; at the present stage of integration, however, any more coercive attempt at co-ordination from above would have less effect than the laborious self-co-ordination of the Member States, who must learn by bitter experience. The further completion of the internal market and of European monetary co-operation in the EMS will doubtless also act as disciplinary factors in this learning process.

The considerable policy margins that the Member States will retain for the present in the overall management of their domestic economies provide them with the opportunity to derive considerable benefit from a more finished in-

ternal market, provided they identify the opportunities accurately. Social stability, a high-quality working population, consistent government policies and a sound physical and technical infrastructure adapted to the requirements of the time could, as diffuse and indirect instruments be more effective in a more open market than specific and direct instruments. In a federal system, individual states have often been able to achieve considerable results in this respect.

4.3.2 *Regulative aspects*

Community competition policy towards enterprises seeks on the one hand to create the legal framework within which enterprises can play an independent role in market integration, while on the other seeking to prevent restrictive practices from leading to market compartmentalization and interfering with the functioning of the market.

Competition policy in the Community is hampered in both these respects by the unfinished state of the internal market. Eliminating the relevant imperfections in the internal market can, however, entail sensitive regulative questions.

For the integration of national markets into a single internal market it is important for the legal and fiscal possibilities for trans-frontier activities by enterprises and co-operation between them to be improved [39]. This area still displays notable deficiencies. Only modest steps have so far been taken towards the harmonization of company law [40]. Eventually a corporate law framework will have to be created in which it makes no difference to companies whether they operate within one or several Member States.

Of the many problems still encountered by companies, particular attention needs to be devoted to the requirements imposed by the legislation of the land of establishment on subsidiaries based elsewhere in the Community. Currently, parent companies and their subsidiaries are subject to differing legal regulations, while the fact that cross-border mergers have to take place under two or more national legal systems creates substantial complications and makes it much more difficult for the internal markets for factors to function effectively. In working towards the harmonization of national company law, careful account will therefore have to be taken of the potentially adverse consequences of the side-by-side existence of independent systems of company law for cross-border legal arrangements, both within and between companies. Closely related to this is the desirability of harmonizing the conditions under which 'European' companies are able to borrow in the national capital markets and of subjecting the cross-border procurement of

---

[39] See *inter alia* J.M.M. Maeijer, 'Harmonisatie van het vennootschapsrecht' (Harmonization of Company Law) and C.W.A. Timmermans, 'De harmonisatie van nationale voorschriften op het gebied van het vennootschapsrecht' (Harmonization of National Regulations in the Field of Company Law), in: *Sociaal-Economische Wetgeving*, October 1971, Vol. 19, no. 10, p. 585 and 608.
E. Stein, *Harmonization of European Company Laws*, Bobbs-Mevill Company Inc. 1971.
J.H. Maschhaupt and P.M. Storm, *De tweede EEG-richtlijn inzake vennootschapsrecht* (The Second EEC Directive on Company Law), Zwolle, Tjeenk Willink, 1978.
C.W.A. Timmermans, 'Europees Vennootschapsrecht - een tussenbalans (I en II)' (European Company Law - an Interim Balance (I and II), *Tijdschrift voor Vennootschappen, Verenigingen en Stichtingen*, October 1978, Vol. 21, no. 10, p. 289, and November 1978, no. 11, p. 340.

[40] *Council Directives*:
of 9 March 1968, 68/151/EEC, OJ L65/8 of 14 March 1968;
of 13 December 1976, 77/91/EEC, OJ L26/1 of 31 January 1977;
of 9 October 1978, 78/855/EEC, OJ L295/36 of 20 October 1978;
of 25 August 1978, 78/660/EEC, OJ L222/11 of 14 August 1977;
of 5 March 1979, 79/279/EEC, OJ L66/21 of 16 March 1979;
of 17 March 1980, 80/390/EEC, OJ L100/1 of 17 April 1980;
of 15 February 1982, 82/121/EEC, OJ L48/26 of 20 February 1982;
of 17 December 1982, 82/891/EEC, OJ L378/47 of 31 December 1982;
of 13 June 1983, 83/349/EEC, OJ L193/1 of 18 July 1983;
of 10 April 1984, 84/253/EEC, OJ L126/20 of 12 May 1984.

shares to a strict prohibition on discrimination [41].

The unity and functioning of the internal market as a factor market are also adversely affected by differences in national legislation bearing on capital. So far little progress has been made towards resolving these differences. Differing national perceptions, traditions and interests have left their mark on the form and content of national company law and corporate tax arrangements [42]. Of the many points at issue, among the most topical are the differences in national perceptions concerning worker co-determination and the fiscal treatment of distributed and undistributed company profits.

Major regulative issues are related to these problems, such as the sharing of responsibility within companies, the protection of capital and labour and the relationship between private company law and companies' public law obligations. The necessary harmonization of company tax provisions is made much more difficult by the fact that the relevant taxes are levied not just for revenue-raising purpose but, increasingly, for other objectives as well.

To seek an optimal solution to all these problems would appear over-ambitious. Indeed, the desire for far-reaching harmonization of national company law could even be at variance with the need for current obstacles to the functioning of the internal market for factors to be eliminated without delay. The solution would, instead, appear to lie in a problem-oriented approach, in which the requirements that companies impose on the internal market as a home market are taken as the guideline. In this way substantial progress could probably be made without first having to resolve the politically more loaded regulative questions. Everything suggests that present economic and technological developments will lead to a greater dynamism of, and diversity in the factor markets. This will have to be taken into account in framing national legislation, with greater restraint being displayed in the regulation of company activity as the economic and social setting becomes more dynamic and complex.

In terms of restrictive practice, competition policy is, as noted in section 3.2.2.3, limited in its application by imperfections in the internal market for services and capital. This applies to transport, the liberal professions and credit and insurance. In all these sectors national statutory regulations and private-law competition regulations, that also serve to regulate market behaviour, are often closely related. Virtually nowhere is market traffic as unfree as in the sphere of the 'liberal' professions.

In competing against American and Japanese industry, the geographical compartmentalization of the markets for services and credit acts as a serious handicap for European industry. It sub-divides the markets for capital and high-technology expertise and means that the services complementing the traffic in goods (such as transport) are relatively expensive. But even viewed in itself, the nationally fragmented and monopolistic services market is a luxury Western Europe can ill afford. The existence of an economically and technologically advanced industry and a high quality services sector are closely interrelated. As such, finishing the internal market for goods alone will not be sufficient to assure West European industry of the home market it needs.

Ensuring the necessary unity of policy with respect to the market for services will, however, require more than the further liberalization of the right of establishment and the movement of services in conjunction with the completion of the internal market for industrial products. The danger exists that, while the Member States might at long last reach agreement on the conditions for cross-border traffic in services and the right of cross-border

---

[41] *White Paper*, op. cit., pp. 33-34.

[42] P. VerLoren van Themaat, in: *Inleiding tot het recht van de Europese Gemeenschappen*, op. cit., pp. 274-280, 294-296, 300-301.

establishment, they might, in response to domestic lobbying, make those conditions so stringent as to rule out effective competition in the Community markets for services.

Liberalization will therefore have to take two forms: the removal of obstacles arising out of differences in national legislation and from public and private law regulations in general. The approximation and reduction of regulation will need to proceed hand in hand, with the simultaneous expansion (and tightening up) of Community competition policy in the relevant markets. The solution here lies in the centralized exercise of the powers that the Community in fact already possesses but of which it is has so far made insufficient use.

In this regard a warning is in order against the tendency in certain Member States (including the Netherlands) to resort to quantitative establishment restrictions in various markets. However acceptable such measures might appear in the national context, it renders free establishment and the free movement of services impossible and amounts to the disguised renationalization of the requirements for establishing or conducting a business that were harmonized with such difficulty at Community level. Where such measures invite retaliation in kind, they pose real dangers to the unity of the common market. Countries such as the Netherlands with a major interest in the further liberalization of the movement of services need to display caution in this area, even when it comes to sensitive questions such as the broadcasting, reception and relaying of television pictures.

4.3.3 *Specific distortions*

In contrast to systemic distortions, the Community does have the powers to take action against conduct on the part of Member States or enterprises that systematically distorts competition in the common market and hence produces specific distortions. These powers are partly enshrined in direct prohibitions, such as those laid down in Articles 85 and 86 EEC, where the Commission's power to take action itself against infringements gives its anti-monopoly policies much greater effectiveness. Partly, too, these powers take the form of general declarations of incompatibility, which are assessed from case to case by the Commission (e.g. under Article 92 EEC), and partly they stem from a general competence to harmonize national laws, regulations and administrative provisions, for example under Articles 100 and 101 EEC.

There are clear links between the finishing of the internal market and the Community's policy competences with respect to specific distortions. As obstacles to the intra-Community movement of goods and factors disappear, the protection afforded by national borders also disappears. For private industry, this creates a substantial temptation to replace the protection provided under (national) public law by private-law agreements. In practice, horizontal market-sharing and price-alignment cartels – indeed virtually all collective exclusive-trading arrangements – can offer the same protection as the old trading borders [43]. Like private industry, the Member States can also seek to compensate for lost protective competences, for example by the provision of production and sales support to national enterprises.

The use of competition policy powers by the Community to combat specific distortions will become more essential and important as progress is made towards finishing the internal market. With respect to the competition policy powers of the Community, a forthright stance is therefore in order when it comes to specific distortions. On close inspection, the legal limitations that this would impose on national policies are less extensive and

[43] W. van Gerven, M. Maresceau, J. Stuyck, *Kartelrecht II, Europese Economische Gemeenschap* (Cartel Law II, European Economic Community), Zwolle, W.E.J. Tjeenk Willink, 1986, pp. 158-163. Cf. VerLoren van Themaat, in: *Inleiding tot het recht van de Europese Gemeenschappen*, op. cit., p. 332.

serious than the actual restrictions that uncontrolled policy competition between them within a more finished internal market would occasion. The various aspects of Community policy against specific distortions of private and public origin need to be examined against this background.

4.3.3.1 Private industry

The anti-monopolies policies conducted by the Commission must on the one hand leave sufficient room for trans-frontier activities by medium-sized enterprises while on the other preventing the geographical compartmentalization of markets. The Commission has certain policy options in this field, most notably the generic exemptions from the prohibitions on certain forms of vertical cartels, such as sole agency and sales agreements and patent licensing contracts [44]. These agreements can produce a certain degree of *de facto* market sharing, but the strict conditions to which they are subject render it improbable that they will lead to the compartmentalization of national markets. If this should nevertheless prove to be the case, such exemptions can readily be adjusted. Excessively strict policies against these types of agreements could even be at the expense of negative integration. Supported by the Court of Justice, the Commission has so far opposed any competition-distorting practices seriously affecting intra-community trade [45]. With the completion of the internal market it will need to continue with these policies, extending them to sectors that have so far escaped its anti-monopoly policies, such as transport and commercial services.

The use of anti-monopoly powers for industrial policy ends goes back some time. It first occurred in the first half of the 1970s, when the man-made fibres industry was grappling with substantial over-capacity, which it sought to resolve by agreements to restrict competition. The Commission did not prove prepared to permit such cartelisation by making an exception to its strict assessment of horizontal collusive practices between large enterprises relating to capacities, scale of production, prices and other conditions of supply [46]. Article 85 paragraph 3 EEC did not permit the Commission to grant these crisis cartels an exemption from the prohibition on restrictive practices. In addition there is an important regulative consideration: taking measures that amount to quantitative restrictions on establishment and minimum price-fixing should not, in view of the impact of such measures on outsiders and end users, rest on private-law agreements but on public-law regulations. With this latter standpoint the Commission raised an important jurisdictional issue. By analogy with the ECSC Treaty on the coal and steel industry, the imposition of quantitative cross-border restrictions and price control measures within the common market should derive from Community powers. When the Member States proved unwilling to transfer the necessary powers to the Community to conduct a *defensive* sectoral industrial policy, the strict application of Article 85 paragraph 1 EEC was the only remaining possibility.

The terms of Article 85 paragraph 3 EEC leave the Commission with wide margins for the positive assessment of concerted practices that contribute to the promotion of technical or economic progress. In its assessment of *offen-*

---

[44] Commission Regulation of 22 March 1967, no. 67/67, exemption for exclusive distribution and purchasing agreements, OJ L849/67 of 25 March 1967;
Commission Regulation of 22 June 1983, no. 1983/83, exemption for exclusive distribution agreements, OJ L173/1 of 30 June 1983;
Commission Regulation of 22 June 1983, no. 1984/83, exemption for exclusive distribution agreements, OJ L173/11 of 30 June 1983;
Commission Regulation of 23 July 1984, no. 2349/84, exemption for patent licensing agreements, OJ L219/15 of 16 August 1984.

[45] CJEC, 13 July 1966, 56 and 58/64, *Etablissements Consten SARL and Grundig-Verkaufs-GmbH v. Commission of the EEC*, ECR (1966), 299. Subsequently confirmed repeatedly.

[46] Van Gerven et al., *op. cit.*, pp. 242-247.
F.-H. Wenig, in: *Kommentar zum EWG-Vertrag*, part 1, op. cit., pp. 1116-1120.

sive industrial policies of this kind the Commission adopts a more flexible stance where the concerted practices in question will only show positive results in the long term, such as research and development co-operation [47]. As the products to which the co-operation relates get closer to the mass production and commercialization stage, the Commission generally becomes more critical, although a more flexible attitude should perhaps be adopted during these stages with respect to markets in which European industry is exposed to stiff competition from outside the EEC. The very fact of stiff competition from third countries guarantees effective competition within the common market and prevents rigidities in the Community structure of production. Anti-monopoly policies that also create difficulties for the stronger and technologically and commercially most capable European companies, need to be re-assessed in detail.

In recent years another problem has arisen for the effectiveness of anti-monopoly policies. Not infrequently national laws and regulations not inherently in conflict with the EEC Treaty provide an almost natural seedbed for private practices to prevent or restrict competition. Regulations of this kind in fact amount to the disguised renationalization of competition policy because they help by-pass and hence nullify Community policy. In recent rulings the Court of Justice has recognized the dangers of this development and set limits on it [48]. The Commission may be expected to exercise closer supervision over the causal links between national legislation and practices to limit competition by enterprises. In doing so it deserves the support of the Member States, which will simply have to accept any further derogations to national sovereignty.

4.3.3.2 State industry

State industry, which reaches extensive proportions in certain Member States, such as Italy, France and Greece, threatens to become a significant obstacle to the further completion and effective operation of the internal market [49]. In section 3.2.2.3 it was noted that public enterprises can be both a special object and an instrument of government policy. Government intervention towards or with the aid of public enterprises contains the inherent danger of distorting cross-border competition and creating trade barriers.

The authors of the Treaty certainly recognized these dangers. Article 90 EEC subjects public enterprises to the same regime as private ones and, in their behaviour toward them, the Member States are bound to the same general provisions of the Treaty. The main rule is that what private enterprises are not allowed to do is also unpermitted for public enterprises, while what the Member States are not permitted to do in general applies also when they use public enterprises as an instrument of policy [50].

There remains, however, a wide gap between the Treaty provisions and the powers of the Community on the one hand and practical Community policies on the other. In most of the Member States the legal and financial relations between the governments in question and public enterprises are so complex that it is very difficult to decide from outside whether the Member States are in fact honouring their obligations under the Treaty or whether

---

[47] Commission Regulation 417/85/EEC, OJ L53/1.

[48] CJEC, 16 November 1977, 13/77, *NV GB-INNO v. Vereniging van de Kleinhandelaars in Tabak (ATAB)*, ECR (1977), 2115.
CJEC, 10 January 1985, 229/83, *Association des centres distributeurs Edouard Leclerc et al. v. SARL Aublèvert et al.*, (as yet unpublished).

[49] Commission Directive of 25 June 1980 (80/723/EEC), OJ L195, p. 35.
P. VerLoren van Themaat, in: *Inleiding tot het recht van de Europese Gemeenschappen*, op. cit., pp. 347-350.
G.C. Rodriguez Iglesias, 'Monopoles d'Etat et Entreprises publiques', in: *Discipline communautaire et politiques économiques nationales*, op. cit., pp. 375-378.
I.F. Hochbaum, in: *Kommentar zum EWG-Vertrag*, part 1, op. cit., pp. 1527-1559.

[50] VerLoren van Themaat, *ibid.*, p. 348.

the market behaviour of these enterprises is consonant with the Treaty. Where infringements of Treaty obligations are identified, it is often difficult to determine whether the enterprise in question is acting independently (in which case Article 85 and 86 EEC apply) or in accordance with a government contract (in which case Articles 30 or 92 of the Treaty may apply).

As long as the situation remains as untransparent as it is, public enterprises in Member States with a comparatively large public market sector will remain able to exert substantial pressure within government for protective measures. A large and untransparent public market sector forms a continuing threat to the unity and effective functioning of the internal market. There are therefore compelling reasons to support the Commission in its efforts to make the legal and financial relationships between the national governments and 'their' enterprises, more transparent, taking account in doing so of both the position of the government as owner or major shareholder and the lines of authority between national governments and public enterprises.

So far the Commission has made a modest effort to clarify the relations between governments and public enterprises. In the interest of an effective internal market, equal attention will have to be paid to the lines of authority (a subject also neglected in the Netherlands).

4.3.3.3 State aids

The specific distortions resulting from government support for individual enterprises in the market sector are subject to a comparatively strict state-aids regime under Articles 92-94 EEC. During the 1960s and 1970s, however, state aids evolved into the most favoured policy instrument for virtually all forms of selective economic policy, so that the Commission's task in enforcing and applying these articles has become a good deal more extensive and onerous than envisaged in 1958.

For various reasons enforcing the prohibition on state aids in Article 92 EEC is considerably more difficult than enforcing that on quantitative restrictions on intra-Community trade (Article 30 EEC). State aids take all sorts of forms and are often barely recognizable. Many are only short-lived. The Commission only rarely receives reports of infringements of Articles 92 and 93 EEC [51], while the Court of Justice has been unable to make Article 92 paragraph 1 subject to direct application, so that the role of actors in the market in enforcing it is necessarily limited.

In view of the major political and social interests at stake with state aids, the Commission encounters enormous and consistent resistance from the Member States in its efforts to enforce Articles 92 and 93. When industries on which entire regions are dependent get into difficulties, strict application of the prohibition on state aids is not easy, especially since the Treaty provides the Commission with an 'out' if it does not want to get involved.

Stricter enforcement of the prohibition on state aids is unquestionably desirable, and there can be little doubt that Articles 92-94 EEC could be better applied than at present. A lot could be gained if the Commission were to declare all forms of state aid that failed to comply with certain minimum requirements of transparency as being incompatible with Article 92 paragraph 1 EEC. Any national practices that dit not lend themselves to proper assessment in terms of binding Treaty obligations would have to be regarded as incompatible with those obligations. The same line of reasoning could be followed for the requirement of recognizability.

The objection that the Member States would not co-operate spontaneously would largely be dealt with by more exacting recognizability requirements.

---

[51] B.H. ter Kuile, *Crisis en rechtsbescherming: crisis in rechtsbescherming* (Crisis and Legal Protection: Crisis in Legal Protection), Zwolle, Tjeenk Willink, 1985.
T.R. Ottervanger, 'Steunverlening en rechtsbescherming: de problematiek rond onrechtmatig toegekende steun in de EEG' (State Aid and Legal Protection: the Problem of Improperly Assigned State Aid in the EEC), *Sociaal-Economische Wetgeving*, January 1985, vol. 33, p. 2.

The Commission could ease its surveillance burden by tying any approvals for state aids to time-limits (subject to extension). The penalties for evading the notification requirement in Article 93 paragraph 3 EEC could be tightened by determining that measures for which prior approval had not been sought in good time would not qualify for retrospective approval. More vigorous efforts could be made to compel Member States that had failed to comply with the notification requirement to recover any improperly disbursed aids. The position of other companies potentially threatened by the proposed support to their competitors could be considerably strengthened if the Commission were to adopt the practice of publishing any state aid measures of which it had been notified and consistently submitting its provisional and definitive views on those measures.

Apart from these negative integration steps to strengthen the effectiveness of the prohibition, more attention needs to be paid to the creation of a Community policy framework in which national state aids notified to the Commission could be appraised and (where appropriate after adjustment) fitted in. The Commission has already made a modest start in the field of regional state aids. In other areas, such as sectoral policy, it has not been able to realize its intentions sufficiently, as the experience in the shipbuilding and textile industries shows. For the Member States to stand any change of success with their policy aims, the positive integration co-ordination powers of the Community - i.e. co-ordination through subordination - will need to be expanded.

Positive integration can also take place when the Community assumes the policies and policy instruments of the Member States. This most far-reaching step - co-ordination through centralization - is only advisable where the policies in question can be conducted at Community level alone. This applies especially to certain elements of technology policy. Even without granting the Community exclusive powers in the field of aid to industry, it may, in the interests of strengthening its co-ordinating capacity, be desirable to provide it with funds of its own with which it could elicit or steer what it regarded as useful measures on the part of the Member States (i.e. co-ordination through induction). The Regional Fund is already used in this way. Any state aids induced in this manner could be exempted from the prohibition in Article 92 EEC.

In the face of the scepticism that these suggested solutions may arouse, it needs to be borne in mind that the lack of effectiveness of unilateral, uncoordinated state aids is now becoming widely acknowledged, together with the harmful side-effects such measures have for the functioning of the market mechanism. Against this background the proposed solutions amount to no more than the minimal conclusions to be drawn from the further completion of the internal market.

4.3.3.4 Approximation of legislation

The developments in the role of national legislatures in relation to the market sector as outlined in section 1.3 also deserve special attention when it comes to competition policy. The extensive regulation of the market sector characteristic of the modern welfare state entails an additional policy burden (both intentional and unintentional) for actors in the market. Differences in perception and the choice of instruments in national legislation act as sources of specific distortions in the functioning of the internal market.

The bulk of market sector regulation is closely bound up with social, economic and technological developments. On account of the accelerating pace of change, national legislation is subject to much more rapid revision. To remain effective, rules and regulations need continually to be adjusted and up-dated. Where today there are no serious distortions the competitive position of leading industries can be seriously undermined tomorrow. Quite appart from differences in social and political perceptions, differences in the timing and location of new developments form a cause for distortions

through disparities in legislation.

In theory Articles 100-102 and 235 EEC provide the Commission with sufficient powers for the approximation of national laws, but in practice Community powers are not up to dealing with the effects of the growth of the national welfare state in interaction with the pace of economic and technological change. The full-scale exploitation of these powers would lead to a significant loss of national legislative sovereignty which, at the present stage of the integration process, would not be readily acceptable to the Member States. A transfer of legislative powers would, moreover, also almost inevitably involve the transfer of policy competences.

The required reduction in disparities in national legislation therefore raises questions that cannot be resolved by means of technical or procedural improvements in the application of Article 100. The mechanical enforcement of this provision in line with the intentions of the authors of the Treaty would result in the transfer to the Community of legislative and policy competences on a scale unacceptable to the Member States, and which would in any case overtax the Community structure.

Apart from the currently proposed amendments and additions to Article 100 EEC, the Community and the Member States will be unable to evade the elaboration of a medium-term legislative strategy directed towards the co-existence of Community and national legislative powers in the same areas of policy [52]. A strategy of this kind might consist of three main elements.

a. Enlarging the transparency of national legislation in areas of policy where specific distortions can easily arise.

Experience with the approximation of indirect taxes indicates that even a partial mutual adjustment in national legislation can lead to substantial improvements in the transparency of national laws and regulations. Taken generally, approximation passes through three stages: first the structure of the system, next the tax base and finally the rates. The progress might be less spectacular than an immediate move towards approximation by the Community, but then such a move would in all probability encounter insuperable obstacles on the part of the Member States.

The phased approximation of legislation has unmistakeable advantages in politically sensitive fields, such as environmental legislation. If the unity and functioning of the internal market should require the harmonization of environmental levies and subsidies, a start could be made here too by harmonizing the structure, next proceeding to the activities and ending up with the level of the levies and subsidies.

By leaving national legislatures a wide measure of freedom for substantive assessment, the scope for reaching agreement in the Council would be enlarged. In determining the form that national legislation should take, preference could be given to modalities that had the least undesirable side-effects for the unity and functioning of the common market. Standardization in terms of specimen Community legislation could lead to considerable simplification since ad hoc formulations to disguise compromises and special interests would be problematical. The legislation drafting process would improve in quality because the structure and permitted policy instruments would already be broadly laid down and the debate would therefore have to concentrate on the essential policy aspects of the proposed legislation. The fact that other Member States would be working with similar specimen legislation would make a comparison of the internal and external burden simpler; each national legislature becomes compelled to take account of the competitive advantages and disadvantages of its conduct for actors in the domestic market.

If even this approach would not in itself eliminate the specific distortions, it would at least afford participants in the market the advantage of comparable national legislation throughout the Community.

b. Pre-emptive regulation by the Community in response to social and economic developments requiring a prompt legislative response at national level.

In order to prevent a new wave of national legislation from giving rise to all sorts of disparities that could be extemely difficult to smooth out at a later stage, there is a case for providing the Community with the power of prior harmonization to which the national legislature would then be bound. Reaching agreement between the members of the Council will generally be easier than in the case of existing national legislation.

Unhampered by the technical details of legislation, the Council could more easily restrict itself

[52] The proposed Article 100B EEC to supplement Article 19 under the *Single European Act*, op. cit., would appear to make this possible.

to the political essentials of the guidelines in question.

A practical objection to this solution is that it would in all probability require amendment to the Treaty, since the accepted interpretation holds that the current harmonization provisions are based on the prior existence of national legislations [53]. Articles 101 and 102 EEC (which have not so far been invoked) could provide the means for a simple adjustment.

The prior harmonization of legislation will also require the Community legislature to guard against excessive centralization in the use of its regulative powers. From the viewpoint of general Community legislative policy, it would always be advisable to leave certain policy margins to national legislators.

Prior harmonization could take various forms. With a view to potential distortions the Community legislature could for example specify sensitive areas of legislation in which the Member States were permitted to make changes only after notifying the Community (i.e. Commission) and the latter had investigated the opportuneness of (further) approximation. Such a variant could broadly be based on the present Article 101 EEC.

c. Phased approximation by the Community.

Not infrequently, disparities in legislation are brought about by the respective stage of economic development, differences in living standards and the degree to which the various economies of the Member States are integrated. This renders the option of phased harmonization attractive as a form of differentiated Community policy. Depending on the subject-matter in question, the phasing could first concentrate on the form of national legislation, extending subsequently to the substantive aspects. Particularly solid grounds for phased approximation exist when legislation in less prosperous Member States of a not particularly restrictive kind and which does not therefore impose a particular external burden provides domestic industry in those countries with specific advantages. In such circumstances, abrupt harmonization in line with the standards of the most prosperous Member States could cause severe dislocation. Conversely developments may take place in the more prosperous areas calling for legislative approximation in the absence of such moves elsewhere. Here too phased approximation may offer a solution [54].

These three principal elements of a legislative strategy for and within the Community can be combined with one another. Depending on the seriousness of the distortions in question and the degree of uniformity required, various degrees of co-ordination through centralization, subordination and co-operation can then be worked out for each country. In each case, a balance will have to be struck between the functioning of the common market (and the seriousness of the distortions), Community legislative capacity and the policy margins to be left to national legislators.

4.3.4 *Competition policy and industrial policy*

Most Member States at least pay lip-service to the finishing of the internal market, but in practice they refrain from drawing the obvious conclusions for their own industrial stategies. This gap between what they say and what they do may be traced back to the principal obstacles to the extension and strengthening of the internal market as outlined above and the complementary common commercial policy and competition policy.

More particularly, the following conclusions may be drawn from the analysis in the preceding sections:

a. The further completion of the internal market for goods and factors of production and the corresponding deepening and broadening of Community commercial and competition policy make severe inroads into the industrial policy instruments available to the Member States. Some of these instruments cease to be legally useable, while others are rendered partially ineffective.

The completion of the *internal goods market* has the following consequences for national policy instruments:

- the disguised use of technical and administrative barriers for (national) industrial policy ends becomes legally impermissible;
- the opening up of government and semi-government markets, including that of telecom-

[53] The opinion that the Community can also take action where national regulations are lacking is to be found *inter alia* in H.C. Taschner, in *Kommentar zum EWG-Vertrag*, op. cit., pp. 1712-1713.

[54] Feenstra en Mortelmans, op. cit., pp. 33 and 34.

munications, would deprive the Member States of an important policy instrument, especially as regards offensive industrial strategy;
- the opening of the services market will mean that services wholly or partly provided by government agencies will also have to be made available to foreign enterprises under non-discriminatory conditions;
- the fact that it will be even less possible than at present to screen national industry off from trans-frontier competition will render unilateral action to influence the capacity of certain industries highly vulnerable. Conversely, the ability of actors in the market to evade unwelcome government action will be augmented.

2. the further completion of the *internal factor markets* has the following main consequences for national policy instruments:
   - binding measures to influence trans-frontier establishment and investment by enterprises largely become impossible;
   - selective measures to control national capital markets, e.g. by setting priorities for access to the capital market, would be seriously impeded or ineffective;
   - national measures to increase or decrease productive capacity would become either ineffective (because they could be side-stepped) or risky (because they could be imitated elsewhere).

3. Intensifying the *common commercial policy* will narrow the margins within which the Member States can introduce formal or informal trade restrictions to protect domestic industry. Conducting an independent national industrial strategy would become much more difficult and uncertain since the use of common commercial policy instruments for industrial policy ends could take place only at the level of the common market.

4. *Community competition policy* within a completed internal market would have the following main consequences for national policy instruments:
   - action by governments to encourage or even establish capacity, pricing and market-sharing cartels (as encountered particularly under defensive industrial policies) would either be prohibited or permitted under very strict conditions only;
   - preferential treatment towards and by public enterprises would in principle be impermissible;
   - state aids would be subject to tighter restrictions;
   - the creation of specific distortions by means of national legislation on behalf of certain sectors would gradually be reined in.

b. Between the (further) completed internal market, and the Community commercial and competition policy on the one hand and national positive industrial strategies on the other there exists a threefold and growing co-ordination deficit:
   - the disparity between the scale of Community markets and national industrial policy measures is growing (i.e. market co-ordination and government action to influence the pattern of co-ordination are taking place at different geographical levels);
   - the substantive policy links between Community internal market and competition policy and the industrial policies of the Member States are coming under further pressure;
   - the tension between the exercise of the Community's powers in the field of the internal market, commercial policy and competition policy on the one hand and national industrial policy powers on the other is growing.

c. The further completion of the internal markets for goods and factors and the deepening and broadening of Community commercial and competition policy as preconditions for restoring the competitiveness of European industry require the Community to obtain effective – i.e. enforceable – industrial policy powers. Only a certain degree of communalization of those powers will be able to compensate the Member States for the loss in their capacity to act in the field of industrial policy.

These conclusions are hardly spectacular when compared with the practical arrangements in states where the market coincides with national boundaries and where control of the parameters of the national market, commercial policy and competition policy, together with industrial and technological policy powers, are generally the preserve of the central government. Partly this reflects the scope of industrial policy – which does not permit divergent interventions within the same market – and partly the connections between

industrial policy and other areas of economic policy already largely in the hands of central government. In terms of substance and the types of instruments used, industrial policy is functionally most effective if exercised at central level.

As with the other areas of policy discussed earlier, no theoretically optimal assignment of powers is possible in this field within the Community in its present state. Solutions will have to be identified that leave the powers of the Member States unimpaired as far as possible, while at the same time minimizing incompatibilities with the internal market and the common commercial and competition policy. Ideally such a compromise would also preserve the effectiveness of national intervention to the fullest possible extent, but the margins for a compromise satisfying these three requirements are narrow. Within the limitations of a finished internal market and a corresponding Community competition policy, substantive national industrial policies are only feasible and effective if the mutual cohesion of the measures of the individual Member States and their co-ordination with flanking Community policies are ensured at Community level. As such the further completion of the internal market will inevitably lead either to the centralization of industrial policy powers at Community level or to the subordination of national action to the co-ordinating competences of the Community. If such a conclusion is accepted as being virtually inescapable, the question then arises of the content of industrial and technological policy at Community level and what sort of minimal powers the Community would need. In answering this question account needs to be taken of the following aspects:

a. the marked differences in perception between the Member States with respect to the place and content of industrial and technological policy;
b. the need not to overload the institutional structure of the Community with excessive decision-making and co-ordinating responsibilities;
c. the limited scale and in some instances lack of enforceability of Community policy instruments, with respect to both the Member States and actors in the market.

These aspects are examined in turn below.

4.4 Industrial and technological policy

4.4.1 *An industrial policy formula*

In identifying a manageable compromise between the various approaches towards industrial policy within the Community the following aspects need to be taken into account:

a. any compromise must be consistent in terms of both objectives and instruments. An overall sectoral approach and a very liberal commercial policy would soon raise predictable problems. A combination of French sectoral interventionism and the traditional West German preference for free trade would therefore appear ruled out as a compromise;
b. in view of Western Europe's dependence on imported raw materials, Community exports of industrial end products and commercial services will need to remain in surplus;
c. the most important high-technology industries in Western Europe must prove capable of withstanding competition from third countries over the long term, for which reason the conditions required for effective competition in the common market need to be carefully monitored. In principle, structural production support and horizontal restrictive practices in the production and marketing phases should therefore be avoided;
d. a Community industrial and technological policy should not overtax the institutional structure of the Community;
e. any transfer of resources to the peripheral states designed to compensate for market trends must not assume such proportions as to cut across the ultimate objectives of industrial policy.

On the basis of these margins for industrial policy by and within the Community it may be concluded that, at the present state of economic integration in Western Europe, a markedly voluntaristic, interventionist industrial strategy would run into considerable obstacles. If such a policy were to be conducted at national level, conflicts would almost inevitably arise with the principles of the internal market, common commercial policy and common industrial policy. On the other hand, any attempt to implement such a strategy by the Community would overtax the political and decision-making capacity of the Community institutional structure. The industrial policy of and within the Community would need to fit in with the main features of a common market extending to twelve states. In line with views in the Federal Republic and, to a somewhat lesser extent, the United Kingdom and Benelux, the core of such a strategy would need to consist of the creation of conditions in which private enterprise could flourish. More direct government action would need to be supplementary and temporary [55].

This cautious approach would limit the policy and administrative co-ordination problems and would not necessitate any major shift in the allocation of powers between the Community and the Member States. Even so, as will be seen below, the realization of a minimalist strategy of this kind would still require considerable effort.

4.4.2 *Instruments and possibilities*

Typical industrial and technological policy instruments may be divided into a number of major categories [56]:

1. The physical, technological and scientific infrastructure.
2. Selective government contracts or purchases designed to stimulate new industrial research and development and, sometimes, to provide a preferential market for new products.
3. Government support for research into and the development of new products, potentially extending to later stages of (pre)commercial production and marketing.
4. Government regulations designed to stimulate research into and the development and marketing of products meeting high standards.
5. Government measures to stimulate the demand for new products.

The effectiveness of these instruments depends on a homogeneous internal market in which competition is undistorted and regulation leaves actors in the market with sufficient room to respond to market incentives and targeted industrial policy measures. This basic precondition will consistently need to be taken into account in the elaboration and application of the instruments listed above. Possible methods of solution for each of these instruments are outlined in the following sections.

4.4.2.1 The physical, technological and scientific infrastructure

Western Europe is seriously handicapped by the fact that the infrastructure for technical and economic development by industry is severely fragmented. This applies especially to the physical infrastructure, on which the rapid penetration of new techniques and their industrial application depend. The extent to which the physical infrastructure has been built up in the various Member States varies, as do its nature and quality. These differences are attributable to various factors: differences in priorities, differences in standards, national monopolies (e.g. telecommunications), and so on. They result in market fragmentation, diseconomies of scale, delays in

---

[55] See also Commission of the European Communities, *The Industrial Policy of the Community*, Brussels 1970, p. 15.

[56] Pelkmans, *op. cit.*, pp. 199-206 and W. Zegveld *et al.*, *Technologie; Naar een op de marktsector gericht technologiebeleid* (Technology: Towards a Market-Oriented Technology Policy), The Hague, Staatsuitgeverij, 1984, broadly assume the same classification.

the introduction of new techniques and handicaps for producers and users within the Community.

There is little the Community can do to redress these imbalances in the physical infrastructure since they flow from often barely distinguishable public and private decisions. What is required is concerted action by private industry and government. The Community can play a stimulatory role, both in localising the most important problems and in identifying solutions. Not infrequently, co-operative co-ordination between the most closely involved Member States can lead to limited solutions which other Member States can then join at a later stage. Such forms of co-ordination must not, however, be allowed to lead to definitive market compartmentalization [57]. Apart from acting as 'broker', the Community (i.e. the Commission) will need to continue with its role of surveillance and supervision.

Compared with Japan and the United States, the technical and scientific infrastructure in Western Europe is inferior, even though in relative terms the level of resources devoted to that end is similar. The shortcomings are partly of an institutional nature: there is too little attention to market and user requirements, and there tends to be a lack of domestic competition. To some extent the shortcomings also derive from a lack of specialization. Because they are required to cover such a wide range, the technical and scientific bodies in most of the Member States are unable to develop specialist expertise [58]. The limited national markets of customers for highly specialized knowledge and expertise moreover militates against such specialization. Not infrequently the (public) regime under which these institutes and organizations operate makes it more difficult for them to specialize; the fact that they have such broad terms of reference means that they find themselves tied to the medium band of public demand.

An ancillary consideration is the fact that the services of national technical and scientific bodies are often more or less tied or directed towards specific national enterprises. While such links might offer some advantage, there is always the potential drawback that superior expertise might be available from a foreign organization.

This calls for a solution under which the Community establishes the principle that the services of national technical and scientific bodies working to industry should be at the disposal under equal conditions of *any* enterprise established in the Community. Such arrangements would strengthen competition between the research institutes, improve the conditions for specialization and help improve the return on the public investment in them, while market integration would be promoted by the cross-border traffic in research and development. There would of course be a certain risk that some of the Member States might seek to avoid bearing their fair share of this infrastructural burden, for which reason the activities of these institutes should as far as possible be made to cover their costs. Another possibility would be for responsibility for maintaining a certain technical and scientific infrastructure to be shared among the Member States, i.e. imposing a certain degree of specialization from above [59].

The drawbacks of fragmentation are less readily rectified in the case of the scientific infrastructure since there is little 'market pull'. Nevertheless the establishment and maintenance of world-class European research centres is extremely important for the future of European industry. There would seem little alternative but for the Community to stimulate the establishment of such institutes itself, for example by the provision of finance. Thus the Community could help ensure the co-ordination of research activities undertaken in the Member States and those conducted under its own auspices. A

---

[57] *White Paper*, op. cit., p. 22.

[58] G. Schuster, 'Gemeinsame Politik im Bereich von Wissenschaft und Technologie', in *Kommentar zum EWG-Vertrag*, part 2, op. cit., pp. 1528-1737.

[59] *Single European Act*, op. cit. The new Article 130F EEC for inclusion under Article 24 would appear to provide an adequate basis for this recommendation.

co-ordinating role for the Community in the field of science and technology is clearly urged in the Single European Act [60], although it is worth noting that the substantive co-ordination of scientific research has not so far proved straightforward [61]. By nature, scientific research does not lend itself particularly well to administrative co-ordination - a point that the Community will need to take into account when implementing the provisions of the Act. In addition the funds set aside by the Community for pure scientific research need to be augmented in order to stimulate high-technology research. Finally co-operation needs to be encouraged between European universities, together with their partial 'Europeanization' [62].

Responsibility for taking the first steps towards a communalized science policy could be assigned to various Community bodies, with responsibility for overall management being assigned to an independent body at Community level which, given a sufficient level of funding and spared the particularism too often characteristic of normal decision-making in the Community, could promote the quality of scientific endeavour in the Community.

4.4.2.2 Government incentives for industrial innovation

Comparative policy research (especially the experience in Japan and the United States) reveals that of the available instruments for conducting a selective industrial strategy, government contracts designed to stimulate the development of new procedures, techniques and products are the most effective [63].

The economic effectiveness of government contracts in stimulating technological innovation depends significantly on the ultimate sales potential outside the domestic market and on the existence of enterprises that are sufficiently competitive to round off the research and development stages with an effective production and commercialization stage - something often lacking at national level.

Nevertheless breaking through the fixation on the domestic market for public contracts is a difficult matter. Since the publication of the first industrial policy memorandum by the Commission in 1971, decision-making on a common or partly communalized industrial policy has remained in a state of impasse. The deadlock has only recently been broken, largely at the urging of private industry, with the first, modest Community programmes Esprit, Brite and Race [64].

The initial and apparently favourable experience with these programmes suggest this to be a promising avenue worth exploring in more detail. The programmes are, however, overly modest in three respects: (i) they are for the present confined to various specialized aspects of the process of technological and industrial innovation; (ii) they relate only to the research and development stages of that process; and (iii) the available funds are on a limited scale , even in relation to the modest aims of the programme. A further drawback is the fact that the Community programmes do not rule out national initiatives, so that overlap and duplication of effort remain possible.

The further completion of the internal market renders it all but imperative that the as yet still modest substitutes for national policy instruments be expanded at Community level. The area covered will also need to be extended. Under the strict conditions of temporariness and degressiveness, the Community programmes will also need to permit support for the commercially-

---

[60] *Ibid.*, Article 24 and the new Articles 130G and 130H EEC to be included under it.

[61] Schuster, *op. cit.*, p. 1534.

[62] Pelkmans, *op. cit.*, p. 202.

[63] Zegveld, *op. cit.*;
Commission of the European Communities, *Towards a Community for Technology*, COM(85) 35, Brussels, 25 June 1985, p. 14.

[64] Council Decision (84/130/EEC) of 28 February 1984, OJ 1984, L67, p. 54.

oriented development of new procedures and techniques, especially when substantial commercial risks are attached to that stage. Such an expansion and deepening will require an increase in Community funding, if necessary by means of additional contributions by the Member States.

As progress is made towards communalizing this instrument, the institutional problems thrown up are likely to become more acute. Given the sensitivity of this area at national level, the Council will need to confine itself in industrial policy to the overall determination of general goals and resources for the various programmes. Organizationally, the Commission would be advised to hive off the management of industrial policy programmes and to make provision for the input of independent experts in decision-making. The perennial problem of how official support should be allocated among the Member States, could be largely neutralized by subjecting contracts to rigorous qualitative criteria and by requiring those commissioning the research to make a substantial contribution and to share the risk.

The solution outlined above follows the course charted by Esprit. Applied consistently it would amount to solving the problem of substantive policy co-ordination in this area by the centralization of powers and instruments at Community level. Functionally and substantively, it is a 'first best' solution: functionally, because it couples market unity with unity of policy and action, and substantively because the inter-relationships with other Community responsibilities of relevance for industrial policy in the fields of the internal market and competition and commercial policy would most readily come into their own.

In addition to this optimal solution, second- and third-best solutions will remain in the picture for some time. The leading contender of this kind would be forms of co-operative co-ordination between the Member States such as the French Eureka initiative [65]. Although this project tends to evade potential conflicts with negative integration (e.g. by the fluctuating level of participation in the various projects by the Member States, the scale of their financial participation, preferential treatment for national enterprises and, possibly, agreements between the companies concerned to restrict competition), this initiative is nevertheless an interesting form of co-operative policy co-ordination which could potentially lead to differentiated integration. With a few adjustments, such as opening up the specialist projects to any enterprise in the Community and other participating states, Eureka could turn into an arrangement for pooling national industrial policy resources along much the same lines as a Community programme, even though decision-making and implementation would be on an inter-governmental basis. An intermediate form of this kind requires special legal arrangements, but since Eureka in its present form also creates Community legal problems, this should not be regarded as an insuperable barrier.

4.4.2.3 State aid for research into and the development of new technologies and products

The selective encouragement of new research and new technologies by means of public contracts and the granting of state aid can be so closely related as to be well-nigh indistinguishable, as exemplified by both Esprit and Eureka. In most of the Member States there is a discernible tendency to merge the two instruments.

Promising initiatives by industry are assessed in terms of industrial policy objectives, and in stimulating new technologies and products government policy is elaborated in consultation with industry. As with government contracts, offensive industrial policy conducted with the aid of support

[65] Eureka-Grundsatzerklärung, Presse- und Informationsamt der Bundesregierung, Bulletin no. 123 of 9 November 1985.

measures can lead to increasingly close links between government policy and company decision-making, in which respect the paradox noted previously arises once more: one side-effect of national policy is the refragmentation of the common market, but this consequence in turn nullifies the objectives being pursued by national policies. As such there is in principle no reason whatever to be less critical towards state aids applied for offensive industrial policy ends than towards defensive national state aids: the different end still does not justify the means.

In so far as state aid acts as an instrument to stimulate the market-oriented development of new technologies and products, an absolute prohibition would be counter-productive. This in no way removes the need for a critical appraisal of the costs and benefits of state aids as an instrument for industrial policy ends, the unintended side-effects of such aid (such as the distortion of competition and loss in competitiveness on the part of the supported undertakings) and the hidden policy burden in the government sector. The results of state aid need to be juxtaposed against those of more general instruments that have a less distorting effect on competition and less effect on company decision-making. Such an evaluation would enable the debate about the desirability of and scope for greater negative integration by the stricter application of the state-aids prohibition of Article 92 EEC to be conducted on a more rigorous basis, whereupon the application of this article could be simplified considerably.

In so far as offensive support measures proved a useful and necessary policy instrument, the centralization at Community level of the relevant powers would afford an optimal solution. From the viewpoint of substantive policy co-ordination, this solution would appear all the more optimal if account is taken of the links between industrial policy and the completion of the internal markets for products and factors, Community competition policy and the common commercial policy. The choices that have to be made in the formulation and implementation of an offensive industrial strategy using state aids can, however, affect national interests and national policies so radically that it cannot for the present be assumed that the Member States would grant the necessary policy freedom, even if the decision-making mechanism were to be improved in various respects. (Nevertheless it would appear feasible for the Community to make more of its existing set of financing instruments available for offensive industrial policy ends than at present. Examples include the European Investment Bank and the Ortoli Facility. The use of these instruments would be particularly to the benefit of the economically weaker Member States lacking the financial resources to conduct offensive policies.) The second choice, the policy co-ordination of national support measures at Community level, would make excessive demands on the decision-making and executive capacity of the Community and would create virtually the same problems and contradictions as a full-scale common industrial policy.

In terms of seeking a solution, a third choice therefore becomes preferable that is more consistent with the present state and potential of political and policy integration. The stress under such a solution would lie not on positive integration at Community level but on the negative-integration state-aid prohibition of Article 92 EEC. On the basis of the Commission's powers under this article it could, after consultation with national experts, narrow the margins for offensive national state aids in both a quantitative and a qualitative sense.

Among other things the quantitative margins would set limits on the minimal scale of the own risk to be borne by the enterprises in question, the maximum scale (in both a relative and an absolute sense) of the aid in question, and the possibilities for follow-up or repeat support (i.e. the degressiveness principle). However, as the production and marketing stages of the product-development cycle drew closer, the quantitative margins would need to be narrowed since the dangers of specific distortions in the

trans-frontier movement of goods and of policy competition would grow larger. The qualitative margins concern the transparency of national state aids, the potential consequences of certain forms of aids for the unity and functioning of the internal market, and the potential competitiveness of supported enterprises. While there would continue to be a risk of substantive policy duplication under negatively formulated margins of this kind, ill-judged national action would quickly be penalized, since national projects that were unable to compete effectively in the internal market would soon have to be terminated without supplementary protection.

By narrowing the policy margins and enlarging the policy risks for the Member States, a situation is created in which supplementary positive policy co-ordination between the Community and the Member States can be assessed. *Substantively* such co-ordination should be confined to technological and product innovation the stimulation of which is of vital importance, and which is on too large a scale to permit fragmented national efforts. In large projects of this kind the interests of the Community and the Member States largely coincide, so that they can also be partly funded out of Community resources. The notification, selection and formulation of such projects needs to be subject to a decision-making procedure in which the expertise needed for a sound assessment of the technological and commercial perspectives and of the quality of the applicant enterprises would occupy a central part. Arrangements of this kind would be building on the start made by Esprit, Brite and Race.

Otherwise, as a fourth-best solution, there is room for co-operation between two or more Member States in stimulating new technological developments. There are a number of such co-operative arrangements within Western Europe, most of them based around projects, and some in areas outside the sphere of Community competence (such as the nuclear research organization CERN). Such forms of inter-state collaboration within the Community at least have the advantage of reducing the risk of policy duplication and divergent national action. It may also be useful for the Community first to gain experience on a limited scale before proceeding to policy co-ordination as such in 'new' areas.

Co-operative co-ordination between the Member States within the framework of Community treaties will, however, always have to take place within the normative limits that these treaties and the secondary Community law based on them impose on national freedom of action [66]. In addition, attention will have to be paid to the various specific and general prohibitions on discrimination under Community law. Co-operative policy co-ordination between two or more Member States may be regarded as a form of differentiated integration. As such, it will have to continue to satisfy the two basic requirements formulated in section 2.3: openness to any Member States under comparable conditions, and the capacity for communalization at a later stage.

4.4.2.4 Government regulation and the development of new technologies and products

It was seen in section 4.3.2 that the legal framework in Western Europe is not conducive to research and the market-oriented development of advanced technologies and products. The most obvious obstacle is the side-by-side existence of differing national systems of product specifications and of differing national regulations for the important telecommunications sector. If industry in Western Europe is to be freed from the serious handicaps caused by the present market fragmentation, this obstacle will have to be removed by liberalizing moves to harmonize standards.

Less obvious but ultimately at least as damaging are the divergent national regulations for the markets for services and factors. Without the free move-

[66] Feenstra and Mortelmans, *op. cit.*, pp. 34-36.

ment of high-grade services the internal market for advanced industrial products will remain incomplete. In this respect particular attention needs to be paid to regulating the procurement, storage and use of data, as well as its exchange. The parallel existence of differing national legal systems could throw up serious obstacles to inter-state information flows. This applies especially to national regulations governing cross-border flows of internal and external company information. Although national legislation in the Community with reference to property law on software and information is still in its infancy, the in itself justified demand for such legislation contains the threat of the fragmentation (or refragmentation) of the internal market. The information revolution has taken national legislators by surprise, and it is vitally important that the wave of legislation likely to take place in this area in the near future be channelled as quickly as possible into Community paths. The vision of a technological Europe necessarily entails the acknowledgement and acceptance of limitations on national legislation.

The arguments for the harmonization and - in part - unification of national legislation with respect to the movement of factors applies even more strongly to industrial policy within the Community. There is an unmistakeable linkage between the legislative interventions required for ensuring the effective operation of the internal market and the interventions necessary for an effective industrial policy. In addition, industrial policy and the fast-moving technological and industrial developments it is designed to influence impose their own requirements on legislative policy at national and Community level. At Community level, fresh approaches will have to be devised for the formulation and elaboration of the regulations for goods and services; the operation of the money and capital markets; protection of the environment against negative external effects of production and consumption; and for parts of company law. At national level, legislation on conditions of employment, industrial safety and elements of social security will in all probability have to be reconsidered. In this way the promotion of technological and industrial change creates a need for a general review of alternatives to the existing legal systems which, being geared to a different, more dynamic and heterogeneous society, would be able to help preserve cherished values and interests in Western Europe.

4.4.2.5 Government measures to stimulate the demand for new products

Industrial policy has traditionally emphasized the supply side of the market. In those cases where the various governments award contracts or procure goods and services the demand side of the (semi-government) market admittedly comes into play, but then primarily with a view to stimulating certain activities on the supply side. The private-sector market generally remains totally out of the picture.

The question therefore arises as to whether the private-sector market in most West European countries is conducive to innovation. In so far as that market is fragmented, the answer must be in the negative. The fact that national industry remains insufficiently exposed to cross-border competition means that market pressures to introduce new technologies and procedures are inadequate. In comparison with Japanese and American end-users, Western European consumers are often cautious in accepting new products and technologies. As a home market for advanced West European industry, the quality of the further completed internal market is determined only in part by market scale. At least as important as the numerical size of the potential clientele is the potential purchasing power and the willingness of consumers to accept new products. As such, improvement of the internal market to promote technological R & D in advanced West European industries deserves close attention, in which respect a distinction may be drawn between the markets for plant and machinery and the markets for consumer durables.

As regards the markets for plant and machinery, West European industry is handicapped by the lack of innovatory initiative in large elements of the

small and medium-sized business world, a lack stemming from excessively traditional management, inadequate training of technical management and a lack of market incentives. Another factor is the inadequate operation of the market for venture capital in Western Europe, which makes it difficult to raise capital for innovative investment, at least on the part of small and medium-sized firms, while over-regulation causes market rigidities.

These factors cannot simply be corrected by a few well-chosen support measures to stimulate the introduction of new techniques and procedures. The majority of the measures required fall within the national sphere of competence, although the conclusion should not be drawn that this leaves the Member States with well-developed policy margins. Here again the internal market itself leads to policy co-ordination, in which respect the role of the Community can be confined to that of advice and information.

The acceptance of new products in the markets for consumer durables and services depends primarily on a steady growth in disposable income and general confidence that this growth is likely to be sustained. Creating these conditions is essentially a matter for macro-economic policy, and will become easier as the competitiveness of West European industry improves and the effects of controlled demand management leak away less readily across the borders of the Community.

Governments, government agencies and public enterprises (e.g. in the telecommunications sector) would be able to promote the introduction of new products and services more effectively by the timely provision of appropriate physical infrastructure, hardware, service facilities and information activities, and by setting competitive charges. As the experience in France has shown, 'framework' measures of this kind can favourably affect the social climate for the acceptance of new products and techniques. The selective stimulation of demand in (semi)government markets is, however, subject to the drawback that a monopolistic supplier can be discriminatory in marketing (national) products. The opening up and preservation of effective competition in the telecommunications markets, which are growing rapidly in terms of both scale and the range of services, will need to buttress the selective promotion of the products newly offered in those markets. The selective sales promotion of *national* products would, however, be at variance with the principles of a finished internal market, thus setting limits on the use of selective demand-management instruments at national level.

4.5 The consequences of finishing the internal market

4.5.1 *Consequences for national capacity to act*

The above analysis leads to the conclusion that the finishing of the internal market and of the supporting competition and commercial policies will undermine the national capacity to act – already affected by the uncompleted state of the internal market – yet further: a conclusion equally as hard to refute as it is to accept at national level.

The statutory margins for carrying out national interventions will narrow substantially. Certain responsibilities still exercised at national level will be communalized or become subject to policy co-ordination at national level. The effect of national interventions conducted with a less extensive set of instruments will leak away more easily and actors in the market will have less difficulty evading them. The vulnerability of the national economies to disruptive external influences will increase and national policy will be more readily disrupted by the 'spillover' effect of action taken in other Member States.

These consequences make themselves felt in each and every area of policy affected, either directly or indirectly, by the process of economic integration in Western Europe and go to the heart of the so-called 'positive' policies conducted in the welfare states of Western Europe. Of the numerous policy

areas, macro-economic and monetary policy are of particular relevance in this respect. In terms of national macro-economic policy, obligatory induced co-ordination with the major EEC partners will, increasingly, be the price to be paid for more intensive market integration. Failure to appreciate this compulsion towards 'spontaneous' co-ordination poses great risks for the effectiveness of government policies. The finishing of the internal market will have an even greater effect on national industrial policies than on national macro-economic policies; leading industrial policy instruments will either lose effectiveness or cease to be applicable. To the limited degree that the Member States do continue to preside over their own instruments, their application will either be tied to Community policy co-ordination or cease to be effective under the conditions created by the internal market.

So that arrangements can be made to compensate at Community level for these losses in capacity to act, it is vitally important for these consequences of the finishing of the internal market to be properly acknowledged at national level. The types of solutions advanced in this chapter for dealing with the most important deficits in policy and administrative co-ordination are by way of minimalist remedies, that would maintain the co-ordinating public capacity to act by and within the Community at a certain minimum strategic level. It would, however, be illusory to see this as a complete substitute for the loss in effective powers on the part of the Member States.

The substitute capacity for action by the Community cannot be some sort of summation of the losses in national capacity to act. It depends instead on various factors: the level of political integration; the special features (i.e. decision-making and executive capacity) of the Community institutional structure and the substantive links between the various Community powers [67]. At national level, it is often implicitly assumed that co-ordinated or co-ordinating Community policy will reflect Dutch (or French, British or West German) preferences, but this is wishful thinking and fails to take account of the special characteristics of the process of economic integration within the Community. In brief, this process necessarily entails a loss in national capacity to act and, in so far as it re-appears at Community level, it will generally take a different form and differ in content and scope. Opinion formation on the future and direction of the process of economic integration in Western Europe would benefit if these implications were sharply formulated from policy area to policy area.

4.5.2 *Consequences for the Community*

The scaling back of national interventionist powers inherent in the finishing of the internal market does not necessarily mean that the scale and intensity of efforts to steer and correct the market mechanism will get any less, but that those interventions will be substantively co-ordinated at Community level or in the Community context. In seeking solutions to the policy integration and co-ordination deficits within the Community, it has repreatedly emerged that the institutional and political margins for influencing the market mechanism within and by the Community are extremely narrow. The second, third and fourth-choice solutions dictated by these margins amount in effect to concessions with respect to the Community's interventionist powers. More specifically, the Community institutional structure and the political setting in which the Community is required to operate make the Community more suited to watching over the regulative framework within which the process of industrial market integration takes place than to conducting active policies to influence market processes. If the present struc-

[67] P. VerLoren van Themaat, 'Aanloop tot een neerlandocentrische planning op lange termijn?' (First Steps towards Dutch-centrist Planning in the Long Term?), *Sociaal-Economische Wetgeving*, March 1974, Vol. 22, no. 3, p. 167.

tural limitations on policy integration are, as would appear to be the case, to be accepted (at least for the present) as essentially ineradicable, the Community will have to manage its limited capacity to conduct steering, interventionist policies with great care.

That caution will mean that within the Community, the market will gain in importance as the co-ordinating agent for micro-economic decision-making in relation to the steering economic policies of the various governments. Member States unprepared to accept that consequence will find themselves in a very awkward political dilemma: they either reject the necessity for the further completion of the internal market for the industrial and economic future of Western Europe and bear the consequences of that standpoint themselves; or alternatively they actively work towards a Community structure capable of influencing market processes on a comprehensive and intensive scale in a finished internal market. It is notable that precisely those Member States with strong interventionist traditions tend to be ambivalent on this score.

In one respect the problem of the steering and corrective policy powers of the Community, and the own resources it would require to that end, will remain acute and probably become even more so as the internal market is finished: the geographic distribution of economic activities and prosperity.

It has been seen in this chapter that the legal and policy margins for solutions permitting temporary or substantive differentiation in Community measures will need to be applied sparingly and cautiously – especially as regards the internal market – and that the room for differentiated integration in the field of a common commercial policy, competition policy and industrial policy is limited. The available possibilities for one or more 'speeds' in working towards the finishing of the internal market and the positive integration required to that end are probably insufficient to redress the increasing geographical imbalances in economic development and living standards in the Community. It is even not inconceivable that, under certain circumstances, differentiated integration – assuming the economically strongest states were to take a lead – might back-fire. This raises an important political and policy issue for Community decision-making, since the differences in prosperity throughout the Community coincide to some extent with national boundaries and to a large extent with the division between the centre and the periphery and that between 'old' and 'new' Member States. If this problem – which could easily become aggravated in a finished internal market – remains unresolved, it could act as a major stumbling block to decision-making on the internal market and on flanking areas of policy.

The problem of the imbalance in economic development and prosperity within the Community tends at present to be raised largely in *ad hoc* terms in response to numerous divergent dossiers and not infrequently – and inappropriately – as a means of pressure. To date there has been little if any suggestion within the Community of a fundamental reconsideration of the need for and possibilities of horizontal financial redistribution. This places a severe restraint on any efforts to promote progress towards negative and positive integration in Western Europe.

In such a re-appraisal, it would need to be borne in mind that the experiences with regional economic policy in most of the Member States indicate that the prospects for such policies depend heavily on macro-economic growth or stagnation. Efforts to shape the geographical distribution of investment are much more likely to succeed in a sound investment climate. Similarly inter-regional solidarity will be stronger at such times and permit a greater degree of inter-regional redistribution of resources than at times of recession. Seen in these terms, steady economic growth within the Community would appear an important precondition for geographically balanced economic growth.

Secondly, it is increasingly questionable whether the investment location incentives are an adequate policy instrument. Especially in advanced industries, the economic life of fixed assets is growing shorter, and there is a

much more rapid re-location of firms on commercial grounds. Even greater stress may need to be placed on the quality of the physical and administrative infrastructure, the quality of the labour force and measures designed to the improvement thereof. Similarly differences in labour costs deserve greater recognition as a factor affecting the distribution of economic activities. An answer is needed to these questions before the Community decides to imitate national policy efforts that have proved comparatively ineffective.

Thirdly, a reconsideration will be required of a number of sectors of Community policy. Some of these, such as the common agricultural policy, lend themselves to the designation of geographical priority areas. If this can be done without coming into conflict with the essence of the policy itself, they would be suited to the geographical redistribution of resources and growth prospects. And in so far as they did appear particularly suited to this purpose, consideration would have to be given to grouping and, if appropriate, expanding the available Community resources.

Put somewhat boldly, the consequences of (for example) the common agricultural policy for the geographical distribution of income within the Community will in the near future need increasingly to be related to the consequences of the finished internal market for industrial products. In the same way that the accelerated introduction of the customs union in the 1960s was linked to progress towards a common agricultural policy, so package deals between the finishing of the internal market and a complementary industrial policy and Community policies to redress regional differences in living standards would appear very much in the offing. To a somewhat lesser extent this applies to the linkage recommended in section 4.1.6 between the completion of the internal markets for goods and for services, including transport. The principal conclusion remains, however, that the Member States with the greatest interest in the finishing of the internal market will have to pay a price in the form of positive compensatory or redistributive Community policies. These policies will impose major demands on the Community's comparatively limited policy capabilities and its slender resources: an observation that confirms the conclusion that the room for a positive interventionist industrial policy on the part of the Community will for the present remain limited.

5. REFORMING THE COMMON AGRICULTURAL POLICY

5.1 The internal market and the CAP

5.1.1 *Between negative and positive integration*

The antecedents of the common agricultural policy lie in the agricultural recession of the 1870s 1880s, which prompted the introduction of active agricultural policies in France and Germany, and the depression of the 1930s, which led those countries that had hitherto conducted liberal agricultural policies, such as the Netherlands and Denmark, to introduce interventionist agricultural policies. Even the United Kingdom, which had conducted an open-door policy from the middle of the nineteenth century onwards (partly to keep down domestic food prices) was forced by the second agricultural depression to introduce support measures for the farming sector. The Second World War saw a virtually universal intensification in government involvement in agriculture throughout Western Europe. After market conditions improved in the early 1950s, government involvement changed in direction and content but remained unchanged in intensity virtually everywhere [1].

For all these changes, national agricultural policies found themselves on the brink of serious problems as the EEC Treaty came into being. The side-by-side existence of differing domestic agricultural policies in Western Europe meant that with the increase in production and the greater level of supply in the world market, national markets were increasingly screened off from import competition. This development was particularly threatening for states with a comparatively large agricultural sector, such as France, or in which agricultural production was heavily export-oriented, such as the Netherlands.

In drafting the EEC Treaty, the founding fathers accurately reflected the principal conclusions to be drawn from the history of agricultural policy, namely that a market policy directed towards the production and marketing structure of national agriculture cannot manage without a set of instruments to regulate the scale, composition and price of cross-border traffic in agricultural products. This indissoluble link between market control and market protection meant that for West European agriculture, negative integration without positive integration was a logical impossibility from the very inception, at least as far as products subject to national regulation were concerned. This objective link was explicitly converted into a legal connection in various rulings handed down by the Court of Justice: agricultural products not coming under a CAP regime are subject to the general provisions of the EEC Treaty on the free movement of goods, and national agricultural regulations are not permitted to derogate from that freedom [2]. The Court of Justice permits only very restricted exceptions to the principle of market unity, which are never permitted to derive from unilateral na-

---

[1] M. Tracy, *Agriculture in Western Europe, Challenge and Response 1880-1980*, 2nd edition, London, Toronto, Sydney and New York, Granada, 1982, pp. 37-226.

[2] CJEC, 10 December 1974, 48/74, *Charmasson v. Ministers of Economic Affairs and Finance*, ECR (1974), 1383. Subsequently confirmed and elaborated in (inter alia) CJEC, 16 March 1977, 68/76, *Commission v. France*, ECR (1977), 515.
CJEC, 29 November 1978, 83/78, *Pigs Marketing Board v. Raymond Redmond*, ECR (1978), 2347.
CJEC, 25 September 1979, 232/78, *Commission v. France*, ECR (1979), 2729.

tional measures [3]. Under the EEC Treaty, therefore, renationalization of agricultural *market* policies is permitted within very narrow margins only.

On policy grounds, too, there are strong arguments for the maintenance and further completion of the unity of the internal market for agricultural products, because the proposition that negative integration demands positive integration also works the other way round. Any form of integrated agricultural policy is seriously handicapped if market integration is not assured and domestic intervention in the structure of production is sustained. Apart from the fact that a dismantling of the *acquis communautaire* would be legally questionable, the renationalization of policies with respect to production, marketing, price-formation and trade in agricultural goods would not solve the problems of West European agriculture but only narrow the actual margins for finding a solution, since intra-Community trade in agricultural products would inevitably have to be tightly controlled for such policies to stand any chance of success, and measures in one Member State would simply provoke counter-measures in others. Ultimately, a development of this kind could lead to every Member State seeking a solution of its own to its agricultural problems. They would then run the risk of returning to the pre-1962 situation, with the difference that the context in which agricultural policy is set has become considerably more difficult.

As argued in section 3.3.2, agricultural policy has developed in such a way that one instrument - the mechanism of price fixing - is being used to pursue two objectives, namely market equilibrium and a reasonable standard of living for the agricultural community. Now renationalization is also taken as meaning that of these two objectives of the CAP, only the former should remain the concern of Community policy. Responsibility for the latter would be returned to the Member States, for example in the form of direct income aids fixed and disbursed at national level [4]. Renationalization may also be said to occur when Community quota arrangements amount to the allocation to the Member States of national production quotas to be administered as they see fit, as is currently the case with the super-levy on milk and the allocation of the so-called A and B quotas under the Community sugar regime. Whereas the renationalization of agricultural policy in the strict sense is generally rejected as politically undesirable and legally impermissible, this is not so with the latter forms of renationalization. There are increasing calls for an incomes policy in the agricultural sector, based on income support, to be reintroduced at national level. The same applies to calls for the national distribution of production capacity, but this would be at variance with the Treaty.

A traditional feature of agricultural policy has been the way it has always taken place within a more or less closed circuit. Community agricultural policy is no exception. Indeed, the CAP is if anything even more isolated than is national agricultural policy [5]. The danger exists that, as budgetary, commercial and environmental limits to the CAP become evident, insufficient account will be taken of the interrelationships between the CAP and other problem areas in the Community. Thus the aim of finishing the internal market is not confined to industrial goods; virtually all the measures required for the completion of the internal market as discussed in section 4.1 also relate to the remaining obstacles to the free movement of agricultural

---

[3] CJEC, 24 October 1973, case 9/73, *Carl Schlüter v. Hauptzollamt Lörrach*, ECR (1973), 1135 (concerning the admissibility of MCAs).
CJEC, 25 January 1977, case 46/76, *W.J.G. Bauhaus v. Nederland*, ECR (1977), 5, (concerning the admissibility of test charges for exports).

[4] G. Meester and D. Strijker, *Het Europese landbouwbeleid voorbij de scheidslijn van zelfvoorziening* (European Agricultural Policy Beyond the Point of Self-Sufficiency), WRR Preliminary and Background Studies Series no. V46, The Hague, Staatsuitgeverij, 1985, pp. 81-85.

[5] S.L. Louwes, *Landbouwbeleid in de EG: het besluitvormingsproces* (Agricultural Policy in the EC: The Decision-Making Process), WRR Working Documents Series no. W11, The Hague, WRR, 1985.

products. The commercial sensitivities that the CAP arouses among third countries have a referred effect on the commercial policies conducted in relation to industrial products. Technological and economic developments have left modern agriculture closely dependent on and interwoven with industry. Recent health, safety and environmental legislation is equally as relevant in agriculture as in other sectors, for which reason the renationalization of agricultural policy, in whatever form, would cut across efforts to finish the internal market.

At first sight, some of the Member States might be attracted by the idea of detaching the income-support objectives of the CAP and concentrating Community policy on market equilibrium. Because the social consequences of such an arrangement would bear primarily on the weaker Member States where the industrial base can also suffer with the finishing of the internal market for industrial products, such a choice would be particularly short-sighted and could thwart not just the necessary reform of the CAP but also the further completion of the internal market.

The assignment by the Community of quotas to be administered nationally may at first sight appear less risky but would tend to consolidate the national basis of agricultural policy. The drawbacks of such a system have already become apparent under the sugar regime, which provided the sugar industry with an almost ideal foundation for a cartel that seriously obstructed intra-Community trade and split up the internal market into national sub-markets [6]. Action of this kind by private and public agencies is always to be expected when production quotas are shared out over the national markets, thus enabling those markets to operate in isolation in the following stages of the production and marketing cycle.

The problem of West European agriculture described in section 3.3 has various causes. These are partly related to the special nature of the production process in agriculture, the special features of the markets for agricultural products, and the structural growth in agricultural productivity. Partly too, the causes stem from the nature and imperfections of the CAP itself. These background factors have been discussed and analysed in some detail in a preliminary study carried out for this report by the Netherlands Agricultural Economics Research Institute (LEI) [7]. In those instances where the growth in production and increase in productivity have left the Community self-sufficient in a growing range of products at a time of stagnating demand, financing problems are, whatever the scale of the Community budget, ultimately inevitable.

The imperfections of the CAP are also partly attributable to the fact that the Community agricultural *market* policies are divorced from the still largely nationally administered agriculture *structural* policies. Because the Community was left to pick up the tab for the improvements in agricultural productivity generated by national structural policies, the Member States had no incentive to hold back. Indeed, by actively encouraging the modernization of agriculture Member States stood to gain a larger slice of Community agricultural resources. There can be no doubt that the de-coupling of these two substantively related aspects of agricultural policy brought the problems of the CAP to a head more rapidly than would otherwise have been the case [8].

To sum up, it can be argued that the problem of agriculture in the Community is primarily attributable to deficiencies and imperfections in the CAP itself, thus suggesting that the solution will depend in the first place on the substantive reform of and additions to the CAP.

---

[6] Cf. Decision of 2 January 1973 concerning a procedure on the basis of Articles 85 and 86 EEC 'European Sugar Industry', OJ L140/17 and CJEC, 16 December 1975, *Coöperatieve Vereniging 'Suikerunie' et al. v. Commission*, 40-48, 50, 54-56, 111, 113 and 114/173, ECR (1975), 1663.

[7] Meester and Strijker, *op. cit.*, pp. 31-53.

[8] European Community, *Perspectives for the Common Agricultural Policy. The Green Paper of the Commission*, Brussels, July, 1985.

5.1.2 *Finishing the internal market*

From this general survey of the links between positive and negative integration in agriculture it will be evident that any disguised or undisguised form of renationalization of the CAP has unacceptable consequences for the unity and functioning of the common market for agricultural products. Such measures would moreover serve to underscore the comparative isolation of agricultural policy and would fail to acknowledge the increasing interdependence between agriculture and other sectors within the Community. Renationalization could therefore impose a heavy burden on efforts to move quickly towards completing the internal markets for goods and services and on further progress towards economic integration in Western Europe. Partial renationalization (either open or disguised) of agriculture policy would admittedly facilitate decision-making in the Community for a brief while, but it would not provide a solution to the basic problems, which require the further communalization of policy. An important conclusion is therefore that the aim of finishing the internal market should also apply to the internal market for agricultural products and that the measures for completing a properly functioning internal market for industrial products summarized in sections 4.1 and 4.3 apply also to the market for agricultural products.

In this respect special attention needs to be devoted to:

a. the remaining *technical barriers to trade* arising from disparities in the national regulations on public health (i.e. the control of plant and animal diseases) and commercial honesty and consumer protection. National laws on foodstuffs are a source of disguised trade barriers, not least because producers and producer organizations often (as in the Netherlands) have a significant voice in drawing up the regulations;
b. the monetary compensation amounts or *green rates*, which are a source of disguised protection, seriously impede intra-Community trade in agricultural products and the determination of which repeatedly taxes decision-making on agricultural policy in the Council. Now that exchange rates have become so much more stable within the Community, the abolition of green rates would be a step in line with the general convergence of macro-economic policies as well as a means of pressure towards such convergence;
c. *disguised production and marketing support* for the agricultural sector, which is bound to distort intra-Community trade. Because such support can eliminate the production-inhibiting effect of restrictive price policies, it can also help exacerbate the problem of surpluses. Particularly in West Germany, the restrictive pricing policies adopted by the Community in recent years have led to the introduction of state aids of this kind. Whatever form they take, such measures are incompatible with the internal market for agricultural products and should as such be abolished as quickly as possible;
d. *national measures to improve the structure of agricultural production.* These measures, which are wholly or partially funded from public sources, are largely paid out direct to farmers, and must therefore be regarded as state aids in the sense of the EEC Treaty. So far the Commission has been notably tolerant of such aids, but now that they have become such a major factor in the overall rise in agricultural productivity in the Community it is questionable whether this indulgence can still be justified. From an economic viewpoint the expenditure of public funds to encourage production the commercialization of which requires even more public funds is a nonsense, even if it might mean a positive return in the short term for the Member States and farmers concerned. In view of the marked differences in the quality of the agricultural structure in the Community, however, a subtler, more differentiated approach will have to be adopted towards state aids to agriculture than towards other national measures to assist production and marketing.

5.2 The margins for solutions

5.2.1 *Technical, policy, political and administrative problems*

The margins within which the Community will be able to find solutions to the problems of the CAP are determined by technical, policy, political and administrative factors.

The *technical* parameters and possibilities depend on two main factors:

a. The marked geographical differences in agricultural productivity and yields arising from natural factors such as climatic differences, differences in soil fertility and land form, the distance between farms and processing/consumption centres, the availability of agricultural facilities in relation to population density and the availability of skilled labour and a further generation of farmers. These differences can to some extent be redressed by means of government policies, but they cannot be eliminated entirely, if only because the cost would be prohibitive. Substantial differences in comparative costs are bound to persist within the Community, and these will be reflected in actual earnings in agriculture. From a historical viewpoint, the fact that the better agricultural areas with superior natural conditions of production are located close to the more prosperous centres of population is no accident. It does, however, render the problem of balancing the geographical distribution of the costs and benefits of the CAP extremely difficult.

b. As noted in section 3.3.2, the evidence suggests that productivity per hectare is likely to continue to increase for a considerable period. Downward adjustments in the volume of production will therefore always be coupled with some form of withdrawal of land from production. In this respect it needs to be borne in mind that major increases in productivity are achievable with comparatively little input in certain backward areas of the Community, such as southern and central Ireland, south-west England, central Portugal and northern Spain, and that these areas are bound to be improved sooner or later under present Community policies. Governments are actively encouraging the introduction of technological innovations in agriculture in most of the Member States, or otherwise agricultural organizations and farmers themselves take the necessary steps.

   Governments have been able to hold back developments only where there are manifest negative external consequences. The long history of most such measures indicates that such action is not without problems. The application of pesticides and veterinary laws reveals the difficulty of striking a proper balance between farmers' interests in higher yields and lower costs and other public interests. Taken all in all, the rise in agricultural productivity is largely an autonomous process, so that, in the absence of measures to restrict production, the total level of agricultural ouput in the Community is likely to continue to rise appreciably.

Two *substantive* policy aspects are the following:

c. The Community's own resources are limited and the Treaty sets limits on the extent to which they could be increased under present policies. Any structural increase in the level of own resources would also run into resistance in various Member States, including the United Kingdom, West Germany and the Netherlands. A further increase in agricultural expenditure would be at the expense of other Community activities that either enjoy political priority, such as the industrial policy programmes, or are politically sensitive, such as expenditure on the Regional Fund or on development assistance. The financial margins given unchanged policies and increasing agricultural production are therefore narrow, and substantial shifts in policy will be unavoidable where there is a continued rise in the unit cost of disposing the increasing volumes of production of products with a Community guaranteed price.

d. Where the volume of production of an ever-growing number of products reaches the point of self-sufficiency, with the threat of ever-increasing surpluses, the Community is bound to come into conflict with traditional agricultural exporters such as the United States, Canada, Australia and New Zealand. The enlargement of the Community with Spain and Portugal will, in relation to Mediterranean products (including citrus fruits), only lengthen the list of potentially aggrieved countries.
As a net exporter of agricultural products, the Community is likely to come into increasing conflict with traditional exporters of agricultural commodities since the technological revolution in agriculture during the post-War period has not remained confined to the Community but has led to a reduction in net import requirements in numerous other traditional importing countries. The world market for leading agricultural products is, therefore, characterized by structural over-production and a lack of effective demand. In these circumstances the threat of growing Community agricultural surpluses will lead to further price falls and increasing resistance on the part of traditional exporters who see their markets further threatened. The result is likely to be retaliation extending to other products. The strained trading relations with the United States are largely attributable to the external effects of the CAP. As the Community's share of world trade grows, it will be increasingly unable to evade its responsibilities for the state of the world market for agricultural products. This could impose considerable strains on the CAP in its present form.

Two factors of a primarily *political* nature are as follows:

e. Any form of government policy inevitably creates vested interests in the perpetuation of those policies and if possible their expansion. The CAP is no exception. When external factors compel the adjustment and review of existing policies, the inner momentum of those policies will initially frustrate any sort of change and serve to delay the necessary adjustment within the system for as long as possible. A notable feature of the CAP is its inertia. Apart from the effectiveness of the agricultural lobby in most of the Member States, there is the further complication that in the Community, the representatives of the Member States do not act as arbiters between competing interests but as representatives of national interests. Because those representatives moreover control decision-making in the (agriculture) Council, the scope for modifying the CAP, at least in the short term, is limited. Any reasonably radical reform of the CAP will, as such, require a carefully monitored strategy over some years, keeping the beneficiaries of Community policy under continuous pressure.
f. The CAP is sometimes portrayed as a combination of measures creating the right structural conditions for the market-oriented production and marketing of agricultural products within the Community. This portrayal has an ideological slant to it, designed to justify the unfathomable system of regulation to outsiders. The allocation problem has been central from the very outset in framing Community policy. It is reflected in the 'deal' between France and West Germany of a customs union in industrial products against a common agricultural policy referred to in section 3.3.5. It also reappears in the elaboration of various agricultural market regimes, where specific arrangements have been made to safeguard certain forms of national production. With the accession of the United Kingdom this gained a fresh topicality in the increasingly controversial receipts/payments argument. Currently in the focus of attention is the argument that 'northern' agricultural products are being favoured over 'southern' ones. In the near future each further step towards the completion of the internal market for industrial products will prompt demands for measures to compensate for presumed rights to produce. Such measures will in turn affect the geographical allocation of resources under the CAP. Allocation sensitivities make it difficult for the Com-

munity to decide and act upon an agreed view of the way in which the CAP should evolve. Council deliberations can never escape the financial implications; the anticipated effects on national 'profit and loss' accounts with the Community severely hold back any fundamental reform of the policy. In this respect the CAP does not, it may be noted, differ from national publicly-funded policies, which are monitored in a comparable way by interest groups.

Finally there are two significant *administrative* problems:

g. The limited decision-making capacity of the Community acts as a handicap for the necessary reform of the CAP. The practical requirement of consensus for all major decisions has in the past impeded the timely elaboration of an economically and socially efficient market structure and system of control. The danger is not imaginary that a solution to the current problems will be seriously sought at Community level only when they are no longer capable of solution at that level and, for lack of anything better, the policy has already been substantially renationalized. But even if attempts at far-reaching adjustment to present policies are made in good time, the very nature of the decision-making mechanism means that 'solutions' will be found to exceed the capacity of that mechanism. As noted in the previous chapter, the decision-making mechanism is not particularly suited to selective policies designed to steer and influence market processes. Community decision-making that fails to take account of this factor will condemn future policies to stagnation and inefficiency.
h. The CAP is largely administered by national governments. In order to achieve a minimum of unity, equality and transparency, the Community will have to make allowance for the fragmented, non-homogeneous executive structure. Certain categories of measures, the implementation of which entails high-level decision-making burdens, involved control procedures and problems of legal interpretation, are therefore undesirable. What may appear in the Council as an elegant political compromise may be meaningless as a legal document and administratively unfeasible. The current experience with the implementation of the super-levy on milk serves as a cautionary example.

The considerations examined above indicate the reformulation of the CAP to be subject to so many constraints that any solution is bound to be less than optimal and to leave a lot to be desired on important points. In order to obtain more insight into the actual margins for reform, two possible solutions currently being advanced to the problem may briefly be examined. These are:

- adjustment of the prices for Community agricultural products in line with those in the world market;
- limiting production to Community self-sufficiency, while guaranteeing farmers a politically acceptable level of income.

An examination of these two alternatives is useful because they provide a frame of reference for identifying a solution that is internally consistent in policy terms, not bound to be rejected politically, and administratively manageable.

5.2.2 *Towards world market prices?*

Unlike a decade ago, a reduction in Community agricultural prices to world levels is no longer taboo in the debate on agricultural policy. The preliminary study by the LEI referred to earlier examines the advantages and disadvantages of a drastic reduction in prices [9].

[9] Meester and Strijker, *op. cit.*, pp. 71-144.

The advantages may be summarized as follows:

a. a *sharp* cut in prices for all important agricultural products could be expected to lead in due course to reductions in the level of agricultural production. With the structural decline in the level of output, a restrictive price policy would tie up less capital and labour in agriculture. The reduction in the number of agricultural producers in the Community would probably be accelerated, while land would be taken out of production and land prices would fall;
b. with the reduction in the volume of production and the appreciably lower price support per unit of output, the budgetary burden of the CAP could decline substantially. As Community prices approached those in the world market, the export restitutions – now continually increasing – would disappear. As a result the commercial policy repercussions of the CAP would decline considerably, since the Community would run into less criticism for contributing towards the problems in the world market for agricultural products;
c. once taken, such a decision would require few further policy decisions. The accent would shift from positive integration to negative integration, while the management of the simplified Community market regimes would impose less of a burden on political decision-making in the Council. As negative integration grew in importance, however, the conditions responsible for ensuring the unity and effective operation of the agricultural market would need to be monitored more carefully. The costs of management and implementation could also be appreciably lower than those under the present arrangements, while the application of the scheme would be more unified and equal. The advantage of a reduced positive integration burden would, however, soon ebb away if the CAP were to lead to prices which, while much lower than at present, still did not correspond to world levels and failed to follow world trends;
d. if agricultural production were more closely linked to the world market this would in due course promote market-oriented specialization, while the application of new agricultural technologies and the resultant productivity gains would not impose any drain on public resources. The selective management of productivity increases would cease to be a policy problem, apart from which greater market conformity in agriculture would be consistent with the principles underlying the Community process of economic integration;
e. a sharp cut in prices would reduce the level of consumer prices for leading foodstuffs, and the resultant moderation in wage pressures could have a favourable effect on the competitiveness of West European industry;
f. since land prices would fall with the decline in unit profitability and the price for raw and ancillary materials would rise in relative terms, more sparing use of environmentally harmful substances might well be encouraged [10].

The most important disadvantages of reducing prices to world levels would be the following:

a. because virtually all major agricultural exporting countries officially support or encourage agricultural production, the negotiation of major deals often involves the governments of the exporting and importing countries concerned. The price structure in the remaining 'free' market tends accordingly to be highly artificial and contingent in nature.
The low price elasticity of demand and limited scope for adjusting supply in the short term make for large price fluctuations in the agricultural market. When the margins between costs and yields are comparatively

[10] M. Tracy, *Agricultural Policy and the Environment*, Report of a panel of experts, Maastricht, European Institute of Public Administration, 1985.

small, rapid price fluctuations makes it difficult to maintain acceptable living standards in agriculture. If adjustment in line with world prices is not to create unacceptable risks for even the most efficient agricultural enterprises in the Community, the major world exporters of leading agricultural products will either have to reach agreement on some form or other of world market control or alternatively the Community market for agricultural products will have to continue to provide a certain buffering against unduly abrupt shocks. Some form of Community agricultural regulation is therefore likely to remain necessary. Such regulation might admittedly be simpler and less costly than at present, but its administration will also confront the Community with awkward political problems;

b. a sharp cut in the prices for the most important agricultural products would almost inevitably have unacceptable social consequences in many rural areas. As the poverty line is reached, farms would go out of business, with a rural exodus in marginal areas. This in turn would seriously undermine the socio-economic capacity to support public and private facilities and lead to the loss of significant natural features. The recent history of the Massif Central in France provides a warning in this respect.
Conversely, depopulation and the graying of rural areas will place increasing pressure on urban areas. Even in more prosperous agricultural areas, however, a sharp cut in prices would create major difficulties for farmers whose investment decisions had been based on a much higher guaranteed price level;

c. a reduction in prices would almost inevitably accentuate differences in the geographical distribution of income and economic prospects in the Community. The gap between the central area of the Community, with its relatively prosperous agriculture, and the economically weaker regions would widen. The further completion of the internal market for industrial products and greater conformity of Community agriculture with the world market would therefore both work in the same direction as regards the geographical distribution of prosperity in the Community. This would create fundamental conflicts of interest between the less prosperous Member States, where agriculture is comparatively weak, and the more prosperous Member States, where agriculture is comparatively strong, which could in turn block efforts to reform the CAP and complete the internal market;

d. the consequences for the standard of living for small and less productive agricultural enterprises could lead to a partial renationalization of agricultural incomes policy. The wealthier Member States, where agriculture is less significant and not so marginal, would be better placed to disburse income aids than the weaker Member States, as a result of which the differences in farm income levels within the Community would coincide to a greater extent than at present with national borders. Because national income subsidies generally lead to the maintenance of inefficient agricultural production and hence affect the functioning of the common market for agricultural products, the form and level of such aids, and the producers qualifying for them, would have to be co-ordinated at Community level. The lack of such co-ordination could result in the displacement by subsidized 'weak' producers in rich Member States of weak, much less if at all subsidized producers in the poorer Member States, thus accentuating the geographical variations in living standards throughout the Community;

e. some of the underlying motivations for active domestic agricultural policies may have lost some of their relevance, such as strategic considerations and assured food supplies at stable prices, but other motives, such as regional-economic and environmental planning considerations, landscape and environmental protection, and social factors remain equally if not more cogent. When these considerations are taken into account,

it becomes difficult to justify or render acceptable the abrupt, wholesale or partial termination of income transfers to the agricultural sector resulting from an overall reduction in agricultural prices. This applies all the more because governments see themselves deprived of a policy instrument of which they may have made excessive use in the past but which is nevertheless highly important for the exercise of certain essential government responsibilities. The importance of such income transfers for the future policies of the Community will be taken up in more detail in section 5.3.

A number of the objections outlined above mean that a reduction in or adjustment of Community agricultural prices in line with those of the world market would place the internal cohesion of the Community under great strain. Even those Member States in which agriculture is structurally so strong that they would be able to hold their own in the world market without protection would encounter severe domestic problems when it came to justifying the large-scale reduction of the income transfer from which the agricultural sector has benefited for a considerable period. For these reasons it must be regarded as highly unlikely that an adjustment in line with world prices would enjoy ready political acceptance with the Community.

For the Netherlands, with its comparatively strong agricultural sector, high proportion of products not subject to a CAP regime, high degree of orientation towards the world market, and large-scale agricultural processing involvement with third countries (partly on account of its geographical location), a general adjustment of prices to world levels would certainly have its attractive features. Under a more liberal regime conforming to market principles, Dutch agriculture would be able to continue benefiting from its comparative advantages and to survive the drastic rationalization that such Community action would result in, possibly emerging with a larger share of Community agricultural production. The traditional market-orientation of Dutch agriculture and its sound organizational and physical infra-structure provide it with good prospects under a system that imposes no limitations on the reallocation of factors of production. Most of the objections summarized above to this solution apply much less or not at all to Dutch agriculture, although the withdrawal or substantial reduction of income transfers to agriculture would create real problems for certain groups of Dutch agricultural producers, at least in the short term. The very advantages that adjustment to world prices would have for the Netherlands (and perhaps also Denmark and the United Kingdom) would, however, make if difficult to promote and defend the scheme within the Community. The competitiveness, high productivity and innovatory strength of Dutch agriculture has already aroused resistance among the Member States with a large-scale but mainly marginal agricultural sector. A strategy that while safeguarding the prospects of Dutch agriculture at the same time forced large groups of marginal producers out of business elsewhere in the Community would appear to have little future if it did not also offer some form of compensation for the impact on the geographical distribution of income and prosperity.

5.2.3 *Production quotas?*

In the case of agricultural products for which there is a Community price guarantee, the history of the CAP provides evidence of a trend (sometimes in abrupt steps) towards the introduction of production quotas. This applies particularly to commodities the production of which far exceeds the point of Community self-sufficiency and has reached such a scale that small percentage increases in total output are so large in an absolute sense as to impose a substantial additional burden on Community resources. The super-levy on production in excess of the quota for milk is an example; recently the Commission also made proposals that could entail the introduction of a quota

system for cereals [11]. The fact that the imposition of quantitative restrictions on one agricultural product stimulates the production of other products not subject to such restrictions means that quota systems have the unintended side-effect that the Community will exceed the point of self-sufficiency for an ever-growing number of agricultural products. The question then arises of the advantages and disadvantages of a system under which the Community price guarantee, set at a socially and economically acceptable level, is restricted to production up to the point of full self-sufficiency.

The *advantages* of quantitative restrictions are as follows:

a. The nature of inter-governmental decision-making in the Council is conducive to a system of dividing up the quota among the Member States, apart from which the Community's administrative resources are too limited to enable it to divide the quota up among producers itself. In allocating the quota among the Member States, and in regulating its distribution among producers, allowance may be made for the income differentials between the various types of agricultural enterprises and, in consequence, for the geographical distribution of farm incomes. This means of division, which any quota system makes possible, renders it a particularly attractive strategy for Member States with a weak or backward agricultural sector. By stressing their unrealized development potential they can even demand – and obtain – a certain over-allocation, as Ireland managed upon the introduction of the super-levy.
b. In many marginal areas the preservation of agricultural activity is desirable not just for social and economic reasons but also forms a necessary condition for preserving the landscape and the environment. The preservation of agricultural activity can be encouraged by the allocation of higher quotas to the weaker enterprises particularly prevalent in such areas.
c. If all agricultural products for which there exists a Community price guarantee were to be subjected to a quota system, the CAP price guarantee would be converted from an open-ended into a budgetary arrangement, thereby affording better control over CAP expenditure.
d. Quota arrangements setting an upper limit to the overall scale of the price guarantee in the region of the current level of total agricultural expenditure leave the scale of income transfers from the industrial and services sectors to the agricultural sector largely intact. In this way agricultural policy can gradually be altered while arousing comparatively little resistance on the part of those directly concerned – as confirmed by the gradual trend towards the quota option as the most viable solution to the problem of the CAP.
e. In the form of national income aids for the most affected producers, quota systems allow a certain amount of room for the renationalization of agricultural incomes policy, without however necessarily leading to hidden production and marketing incentives.
f. Because quota systems generally keep production below the point of self-sufficiency, the Community would no longer be obliged to dispose of large quantities of agricultural products with substantial export restitutions. The commercial policy conflicts currently generated by the CAP would diminish.
g. The evolution of the existing quota arrangements indicates that this approach does not have to lead to unbridgeable political and policy disputes in the Community, since they do not represent a fundamental break with existing policies. The scale of national quotas and the elaboration of the

[11] Commission of the European Communities, *Commission Memorandum on the Adjustment of the Market Organization for Cereals*, (COM (85) 700, Brussels, 21 November 1985. Commission of the European Communities, *Proposal for a Council Regulation Amending the Common Organization of the Market in Cereals and Rice*, (COM (86) 30, Brussels, 12 February 1986.

various allocation criteria lend themselves to negotiation and compromise. Fundamental conflicts of interest between the Member States with comparatively weak and comparatively strong agricultural sectors could therefore be avoided.

The *disadvantages* are in a certain sense the mirror-image of the advantages of adjusting prices in line with world levels.

a. Any form of quantitive restrictions consistent with historical developments implies that comparative cost differences will play less of a part in the allocation of factors of production in agriculture. In this sense the growth in agricultural productivity would lag structurally behind what was possible and behind that of producers in the world market who were able to take advantage of further specialization.
   Enterprises that were just enabled to keep going by the quota arrangements would lack the necessary financial resources to invest in technological innovations, so that the structure of production would rigidify. The result could be that ever-increasing prices were needed in order to keep such enterprises in business as living standards rose elsewhere in the economy.
b. Quota arrangements with a price guarantee would create a continuing need to screen the common market off from foreign products. The CAP would therefore remain a sensitive issue in international trading relations, even if the self-sufficiency point were not to be exceeded.
c. The principal objective of any quota system for agriculture is to bring about a transfer of income from the consumer and the industrial and services sector to agriculture by means of prices set above market levels but without permitting over-production. The necessary consequence of such a system is that there are no incentives for agriculture to reduce the scale of those transfers.
d. Agricultural producers and their representative organizations will continue to exert pressure at national and Community level to enlarge their quotas until they no longer pinch. The management of any quota system therefore throws up considerable decision-making problems. Allocative decisions may lend themselves to negotiation between the Member States concerned, but the necessary room would have to be found by enlarging the overall production quota or by creating exceptions. This then raises the threat that production quotas would eventually come to exceed the level of Community self-sufficiency. Potential advantages of a quota system would then rapidly diminish, while West European agriculture could lose in competitiveness against foreign agricultural producers.
e. Quota systems would not affect the continuing rise in yields per hectare and corresponding fall in cost price. This trend will continue unabated in the central areas, with the result that the permitted quantities would be cultivated on an ever-decreasing area. The surplus land would then become available for the cultivation of crops not subject to quantitative restrictions. Once again, this could be done the most cheaply in the central regions and, unless quotas were also imposed on these crops, their production would be withdrawn from marginal areas. An extension of the quota system, however, would still not prevent the rise in yields per hectare for these crops in the central areas, so that a situation would eventually be created in which some of the agricultural lands had to be taken out of production. And if agricultural policies sought to prevent this by blocking technical progress, lands would go out of use on account of the loss in competitiveness in the world markets. In this way important economic, social, country planning and environmental objectives of a quota system would be placed in jeopardy.
f. A system amounting to the distribution of productive capacity would involve a heavy administrative burden and create problems of an administrative-legal nature when deciding what was a reasonable allocation of quotas among producers. Supervising a quota system is difficult

enough when output is strictly channelled into the succeeding processing and marketing stages, as the experience with the super-levy on milk and the catch quotas in the fishing industry has shown. Where production is not 'canalized' in this way, or only imperfectly so, as with cereals, administering a quota system becomes much more difficult, because part of the production will almost inevitably leak away. Quota systems also become more complicated than necessary because the implementation problems at national level are insufficiently linked back to the Community sphere and are easily by-passed in the Council, which tends to concentrate in its decision-making on quota allocation. Strengthening the position of the Commission in the decision-making process could in due course effect some improvement.

g. The division of the quota among the Member States and by the latter among producers entails renationalization because the distribution of production is divorced from the operation of the common market and intra-Community trade in agricultural products is increasingly determined by the distribution of the quota among the Member States. The result is that the free movement of agricultural products and the internal market for these products assumes a different form from those for industrial products.

For the dynamic, market-oriented Dutch agricultural sector, the introduction of production quotas for the most important CAP regimes would have serious drawbacks. Horticulture, in particular, would be exposed to major risks. Quotas would largely eliminate the ability further to exploit the country's comparative advantages, limit the scope for further specialization and accordingly obstruct the introduction of technological innovations. These drawbacks could be limited by rendering quotas transferable within the Community. The introduction of such a system would, however, strengthen the existing trend towards greater specialization and accentuate the current geographical disparities in prosperity and the differences in development prospects between the Member States. Such developments would, however, be at variance with the objectives that quotas were designed to attain.

Another perhaps equally as important objection as far as Dutch agriculture is concerned is that the continued introduction of quotas for supported agricultural production in the Community could isolate the common agricultural market in the world market even further. Community agricultural producers will only be prepared to accept strict limitations on production increases if they are confident that their production has been used as fully as possible within the common market. This could affect the Dutch livestock industry, which at present benefits from Rotterdam's favourable location for imports of feedstuffs. This geographical advantage could be displaced to northern France, the region with the biggest grain surpluses. The tendency to exceed self-sufficiency levels under quota systems also holds little appeal for that section of Dutch agriculture oriented towards the world market, which could suffer from any retaliatory measures.

Together with Denmark, the Netherlands is in an unenviable position if it wishes to prevent the CAP from drifting gradually towards generalized quotas based on the patterns of agricultural production determined by national boundaries while the Community cuts itself off even further from the world market. These countries must fend for themselves in an institutional environment which, given the inherent degree of negotiation, has great difficulty in escaping from the policies as they have evolved and very little ability to effect a radical reform of its deadlocked policy. When, moreover, certain Member States attribute some of the blame for the CAP's present problems to the expansion and productive capacity of Dutch agriculture and fear Dutch competitiveness, Dutch arguments against quotas or for rendering quotas transferable are bound to be received with suspicion. As long as the Netherlands is unable to come up with anything other than calls for policies conforming to market principles that would leave its comparative

advantages intact and potentially aggravate the geographical disparities in prosperity and growth prospects within the Community, the platform for its arguments will remain a shaky one.

5.2.4 *The two strategies assessed*

A comparison of the two strategies indicates that while operating in conformity with market principles would remove some of the most serious problems of the present CAP, other issues would be aggravated. Quantitative restrictions would temporarily alleviate certain problems but, as a modified perpetuation of existing policies, would not offer a Community solution, since the structures of production would then rigidify in the patterns determined by national boundaries.

If greater market conformity with lower price levels is assessed in terms of the eight factors setting limits on policy adjustments described above, there turns out to be a positive relation with:

a. the concentration of production in areas with the most favourable national conditions, because policies in conformity with market principles necessarily lead to the optimal utilization of comparative differences;
b. the lack of own resources, since the need for and scale of market support would decline sharply;
c. commercial policy objections, because the subsidized sale of surpluses in the world market would be cut back heavily;
d. the decision-making capacity of the Community institutional system, because a drastically simplified system of market regulation would in principle create fewer policy problems;
e. administrative difficulties, since the administrative burden of the CAP at national level would decline and the system would become more transparent as far as the supervisory Community agencies were concerned; in this way the rules agreed by the Community could be implemented in a more unified, equal and cohesive manner.

There would be a clear *negative* relation with:

a. the *acquis* as the starting point for policy adjustments, since a fundamental reform of the CAP in terms of both objectives and resources would come into sharp conflict with the policies that had evolved over time;
b. the issue of geographical disparities in income and growth prospects, because further concentration and specialization in line with differences in natural conditions of production would accentuate the existing imbalances in the Community.

An assessment of production quotas as a solution reveals a *positive* relation with:

a. the *acquis* of existing policies as a starting point for policy adjustments, since production quotas in their present form are gradually amending the CAP anyway;
b. the question of geographical disparities, since production quotas would not necessarily lead to the further erosion of agriculture in marginal areas.

Negative associations exist with:

a. the tendency for production to be concentrated in regions where the conditions of production are the most favourable, since the allocation of quotas to the Member States would almost inevitably freeze the existing pattern of production;
b. commercial policy complications, since the even greater isolation of the common agricultural market in the world market and the tendency to exceed production quotas and self-sufficiency limits would continue to generate potential problems;
c. the management of a system of quota arrangements, since this would im-

pose a major burden on the decision-making capacity of Community bodies, and the effectiveness of the decisions would continually be under pressure from proposed exceptions and refinements;

d. the effect of decision-making problems in relation to the management of a quota system on implementation and application, since this will – quite apart from the policy burden for the executive agencies and agriculture itself – rapidly widen the gap between the objectives and results of those policies.

This survey indicates that ability to introduce quantitative restrictions would be primarily governed by political factors, but that ultimately other constraints would be an increasing source of difficulty. In this respect it is a matter of concern that the existing nature of the CAP should so firmly form the point of departure for any policy reforms that the adverse consequences *over the longer term* of a system of non-transferable quotas should be tolerated. In terms of effective capacity to act, substantial deficits therefore threaten to arise for the Community's present agricultural policies.

As regards *substantive policy co-ordination*, present policies are inadequate because a quota system might alleviate agricultural problems in certain respects but could not solve them.

The policy exhibits considerable *administrative co-ordination deficits* because the Community's decision-taking mechanism is being overloaded and the limitations inherent in the decentralized administration of the CAP are not being taken into consideration. The overburdening of the decision-making capacity of Community organizations in turn derogates from substantive policy co-ordination.

From the viewpoint of the *allocation of responsibilities*, the partial renationalization now under way does not measure up to the further formulation and implementation of integrated policies in a more closely integrated internal market for agricultural products. This development is at variance with the requirement noted in section 5.1 for market unity and the unity of agricultural policy to proceed in parallel.

The question now arises as to whether any strategy is conceivable that would both promote more market-oriented agricultural policies and a more balanced geographical distribution of prosperity and growth prospects within the Community, without at the same time representing an abrupt and radical break with the policies conducted up to this point. This would mean moving away from the combination of market unity and freedom of economic action at a guaranteed price level on the one hand and, on the other, agricultural *market* policies as the chief instrument for redressing geographical income balances in the Community. A more market-oriented agricultural *market* policy with lower prices should be accepted as a trade-off for the retention of unity of and freedom in the market, while at the same time developing new instruments to aid weaker areas. In this way it might be possible to break out of the apparent impasse that threatens to deprive the Community and the Member States of their effective capacity to act in the field of agricultural policy.

A strategy along these lines is discussed in the following section.

5.3 A possible solution: market conformity and solidarity

5.3.1 *A reorientation*

The essential precondition which any modification of the present CAP must satisfy is that the unity of the market and policy unity must be preserved and strengthened. As seen in sections 5.2.2 and 5.2.3, current policy does not satisfy this condition. It will only do so if it is directed towards three central objectives:

a. the restoration and maintenance of market equilibrium under conditions of rising agricultural productivity and inadequate demand;

b. contributing substantially to a reduction in geographical disparities in prosperity and growth prospects;
c. the maintenance of agriculture in marginal areas with a view to preserving the landscape and nature and environmental conservation.

Re-orienting the CAP in this way would, in the first place, mean getting away from the strategy of attaining market and geographical/social equilibrium by means of the price instrument alone. If the price instrument is only directed towards the attainment and maintenance of market equilibrium, a solution will at least be found to the drain on Community resources caused by the structural growth in agricultural productivity. This will require a very considerable drop in prices, with the additional question as to how much and which land needs to be taken out of production.

The withdrawal from production of marginal lands and enterprises - if necessary with some delay - is not a new phenomenon, but the scale on which it will have to take place is without precedent. For the first time in history a steady and major increase in yield per hectare is currently coupled with structural market saturation. The withdrawal of agricultural lands will therefore not just be taking place at a time when the agricultural price level is gradually being lowered but will have to go hand in hand with the rise in yields per hectare. A strategy of moving towards world price levels will therefore have to make allowance for the continual shrinkage in the area under cultivation in the Community. Given an average annual increase in productivity of 1.5% in the agricultural lands remaining in production, over 20% of land of average quality would have to be taken out of production by the year 2000 in order to prevent the level of production from rising. This represents nearly ten times the area under cultivation in the Netherlands. Even if allowance is made for a certain increase in demand for agricultural products and the present demand for land for other than agricultural purposes, the areas in question remain very large.

For the less densely populated and, in a socio-economic sense, backward rural areas of Western Europe, however, the maintenance of *a certain level* of agricultural activity is vital for the continued viability of centres of population and for the preservation of the landscape and nature conservation. In these areas, the price to be paid for a reduction in agricultural prices determined solely by economic trends and budgetary limitations is unacceptable. Depopulation, greying and despoliation of the landscape would almost inevitably follow the further marginalization of these areas. The abandonment of price policy as an instrument for the maintenance of geographical and social equilibrium in agriculture will therefore have to be compensated for by other measures. In this respect it needs to be borne in mind that, as a socio-political instrument, price policy has always worked sub-optimally within the Community and that, given the major variations in fertility and farm size in the Community, adherence to the system of uniform Community prices for income-distribution purposes has over time generated wide disparities in agricultural incomes throughout the Community [12]. The one and the same price can assure one category of producers with excellent operating results while pushing another category well below the subsistence level. The restrictive price policy of recent years enforced by the Community's budgetary problems has already had serious consequences in poorer agricultural regions.

In principle, measures to maintain the necessary level of agricultural activity and the development of the infrastructure for agriculture and for other activities in the industrial and services sector are a much more effective instrument for marginal areas. Measures of this kind permit a greater degree of differentiation in income levels and development potential than price policy, which has the effect of levelling downwards. Compensatory measures

[12] R. Fennell, 'A Reconsideration of the Objectives of the Common Agricultural Policy', in: *Journal of Common Market Studies*, Vol. XXIII no. 3, March 1985, pp. 257-276.

are also more effective since they enable the causes of the socio-economic vulnerability of the marginal agricultural regions to be tackled selectively. Prices which, even if set at a 'socially justified' level, barely guarantee a subsistence standard of living for producers, can at best slow down the exodus from the weaker regions but cannot prevent it, since they do not go to the root causes of the exodus.

An inevitable consequence of a more market-oriented agricultural price policy coupled with structural support for marginal agricultural areas is that the burden for the restoration of equilibrium between demand and supply comes to bear on the economically strong regions. This applies to both the decline in agricultural production and to the financial burden, although the latter would have to be borne not just by the agricultural sector but also by the industrial and services sector. Which is where they *should* be borne, since agricultural producers in these areas can adjust more easily to changing market conditions and because the industrial and services sector there benefit more in comparative terms from the further completion of the internal market for industrial products. It is, in short, the price that has to be paid for the unity and future potential of the internal EC market.

The possible solution outlined above would require the development of new instruments; it would also necessitate a reallocation of powers between the Community and the Member States, because the existing division between market policy powers (with the Community) and structural policy competences (with the Member States) would be incompatible with such a strategy. To substantiate this proposition it is necessary to examine the two main elements of the proposed strategy in more detail.

5.3.2 *A more market-oriented price level*

Depending on the natural conditions, farm size and the structure of production, a gradual reduction in intervention prices to a more market-oriented level, under which levies and restitutions at the external border of the EC would at least be in equilibrium, would have widely divergent consequences for agricultural production.

The most prosperous agricultural areas are located in Denmark, the Netherlands, East Anglia, the Paris Basin, the central and north-western areas of West Germany and the Po Valley. In these areas, a gradual but drastic cut in prices would squeeze agricultural incomes considerably and therefore lead over time to a drastic decline in land values and rents. In agriculture, this would result in the cultivation of land capable of being used for a wider range of crops. Because the better agricultural areas are in general located in the more densely settled and urbanized areas of Western Europe, it is reasonable to assume that a reduction in land prices would lead to a considerable increase in demand for land for non-agricultural purposes.

A reduction in agricultural intervention prices would not be unjustified for the producers in the 'good' agricultural areas since agricultural price levels in the Community have so far been partly or mainly geared to the cost/earnings ratio of smaller producers operating under marginal conditions. But the fact that larger producers in more fertile areas have based their operations and investments on the hitherto high price levels would confront them with insuperable problems if those prices were suddenly and drastically cut. To enable enterprises to adjust their operations to the change in market conditions, the cut would therefore have to be a *gradual* one. Even then, the changes in the structure of production in the more prosperous agricultural areas would be appreciable since the drop in income, new forms of land use and withdrawal of lands from agriculture would lead to a sharp decline in the number of farmers. A process already under way in Western Europe for some decades now would therefore be given an extra impetus. This would be the almost unavoidable consequence of keeping the markets for agricultural products open and of the unrestricted introduction and application of more productive techniques for which producer organiza-

tions in the wealthier areas have been pressing so hard.

A gradual reduction in price levels would mean that the existing quota arrangements, such as those for sugar and milk, would need to be continued with for some time and that an interim solution will have to be found to control the rapidly accumulating cereals surpluses. In the case of milk, a gradual reduction in the quota and a lowering of intervention prices would clear the way for the quota system to be replaced by a temporary, tapered system of socially-oriented income support for smaller producers. After the passage of time the structure of production in the better agricultural areas would be expected to adjust to production without significant market or income support. In the case of the CAP regime for cereals, the gradual transition to lower prices could perhaps be softened by a co-responsibility levy to finance sales outside the EC. In practice this might take the form of a regionally differentiated levy per hectare. Confining such a levy to grain brought onto the market by producers could also have the effect of stimulating mixed farming in the cereals-producing areas of the Community – a development that would in any case be set in train by the gradual reduction in cereals prices. This would be at the expense of intensive livestock farming in the more marginal sandy areas in the Netherlands, Belgium and parts of West Germany, but restraint will in any case be required in these areas on account of the build-up in animal wastes. An alternative means of applying the co-responsibility levy (particularly attractive since it has a direct effect on the scale of production), would be to have a variable levy depending on the extent to which producers leave their lands fallow.

The necessary reduction in surpluses as productivity continues to rise need not lead to the permanent withdrawal of land from agricultural use; as it is, it is very difficult to achieve proper crop rotation while at the same time maintaining the areas under cultivation with important crops such as potatoes, beet and onions. This problem is not to be underestimated. The lack of proper crop rotation leads to all sorts of diseases and pests which have to be controlled chemically, which in turn creates serious risks for the environment and, in the long term, public health [13]. On account of these crop rotation requirements it is advantageous to keep all agricultural land in production, but leaving some of it temporarily fallow. In order to prevent this from leading to loss of soil structure erosion and weed growth, such land will at the least need to be covered. This makes it attractive to step up experimentation with various crops, if only to keep costs down. These might include fodder crops, protein crops such as beans and peas, oilseed and industrial and pharmaceutical crops. With a view to avoiding the high taxes and excises on energy, farmers could also do more about generating their own energy requirements.

Any lands taken out of production in the more prosperous agricultural regions could be used for various purposes. Some land might become cheap enough to permit commercial forestry, in which respect it may be noted that forestry in Western Europe has not been outstandingly productive to date, since most of the forests are on poor soils. Commercial forests in the more central and densely populated areas of the Community could readily be combined with recreational facilities, which would be better situated than in the more peripheral, marginal areas. Good experience has also been obtained with the establishment of nature reserves on soils suitable for agricultural purposes. In view of the much greater pressure of human activity on the natural environment in the central regions than in the peripheral, sparsely populated areas, there is a greater need for ecological buffer zones. Finally, the pursuit of agriculture on land that had become cheaper would make it

[13] W.J. van der Weijden et al., *Bouwstenen voor een geïntegreerde landbouw* (Building-Stones for an Integrated Agriculture), WRR Preliminary and Background Studies Series no. V 44, The Hague, Staatsuitgeverij, 1984, p. 190.

easier in these areas to set aside room for landscape features to preserve or enhance natural diversity. Seen in this light the reduced demand for agricultural land in the central, more heavily populated regions of the Community would create room for environmental planning policies to meet a wider range of needs than those catered for under the present agricultural policy.

In the genuinely marginal areas, the consequences of a gradual yet drastic fall in prices for the principal agricultural products would be of a totally different order. Where agriculture is already marginal and can barely be justified on social grounds, reaching an equilibrium at a considerably lower price level would mean that many farms would have to go out of business and that large areas of agricultural land would go out of production. Given the limited demand for other forms of land use in these regions, the cessation of production would entail the risk that these areas would be deserted and become waste land subject to erosion.

In the Europe of the Nine, the agricultural areas handicapped in terms of natural conditions, location and physical and social infrastructure are located particularly in the west and north-west of Ireland, throughout Scotland, in parts of Wales, in the south-east of West Germany, in and around Luxembourg, in France (the Vosges, the Jura, the Massif Central, the Pyrenees and the Alps) and in Italy along the axis of the Apennines and on the islands. The most recent countries to join the Community - Greece, Spain and Portugal - also contain extensive areas where agriculture is pursued along traditional lines at unacceptably low living standards and with little prospect of significant improvements to the structure of production. Apart from these major problem areas, each of the Member States of course contains numerous pockets with a lower standard of living and poorer growth prospects. The much smaller scale of the problem in those areas means that the social, economic and demographic consequences of terminating agricultural production are less serious since individual farmers, though radically affected, can be more readily absorbed by the surrounding, relatively prosperous community.

Apart from these central and marginal areas, there are also regions in the Community with real development potential but where lack of land-development (such as drainage, clearance and reparcelling) has left this potential largely unexploited. Although, in comparison with the wealthier central areas, these areas are still marginal in terms of current yields and productivity per hectare, they afford the potential for an agricultural structure of production capable of coping in the long term with a considerably lower price level. Examples of areas capable of such development are to be found in southern and central Ireland, southern and south-west England and Schleswig Holstein.

A drastic if gradual reduction in prices would have unacceptable consequences both for less prosperous agricultural areas with development prospects and for genuinely marginal areas without any prospects for the development of profitable agricultural activities at prices closer to market levels. To compensate for this, the steps towards a more market-oriented price policy as required for the future of European agriculture would need to be buttressed by a combination of supporting and compensatory measures. These measures have in common that they would involve some form or other of financial transfer from the wealthier parts of the Community to the marginal and poorer regions.

5.3.3 *Compensatory measures*

The financial transfers to areas with development potential will have to contribute towards a more balanced geographical distribution of the agricultural production capacity within the Community. These transfers will

therefore need to be largely by way of a Community financing of measures for the development of an agricultural structure capable of operating under more market-oriented conditions. The measures may relate to improvement of the agricultural infrastructure, such as drainage, irrigation, opening up new areas and soil improvement, as well as to improvement of processing and marketing facilities and storage, transport and processing capacity. A less direct but ultimately important stimulatory effect can be obtained by means of agricultural research and counselling. In these regions there are potentially viable enterprises for which temporary and degressive support in the form of a fixed sum per viable production unit would be in order during the difficult adjustment period caused by the proposed reduction in prices. Inevitably, however, increases in scale in these regions – as in the traditionally more prosperous regions in central areas – would force enterprises to go out of business that could not operate profitably at a lower price level. The greater provision of structural support to enterprises can help encourage the establishment of production units of sufficient size.

The combination of measures outlined above would have to be carefully selected to form a cohesive whole. In the past, national as well as Community structural measures have consistently led to an improvement in operating results in the sheltered climate of CAP regimes. The profits obtained at micro level then produced losses at macro level in the form of surpluses which the Community had to finance. In order to prevent this, Community measures to promote the development of and new activities within viable areas should from the outset be directed towards the establishment of a production structure capable of surviving under a more market-oriented price policy. Marked restraint will therefore have to be shown in the selection of the areas in which the agricultural production potential is to be stimulated. Restraint is all the more called for since each expansion of the agricultural production potential in the Community will aggravate the adjustment problems in the prosperous agricultural regions. In so far as such an expansion leads to a more balanced geographical distribution of agricultural capacity within the Community it is a price that has to be paid by way of compensation for keeping the market open and for the maintenance of growth possibilities in agriculture. At the same time, the need to create an economically viable structure of production will have to be the decisive consideration.

In the case of the genuinely marginal areas, the content of Community policy will need to differ markedly. For these areas the package of measures will need to consist primarily of five different sorts of interventions, some of which are specified in the Commission's Green Paper [14].

The genuinely marginal areas also contain enterprises that have untertaken considerable investments in the past and which, given their size, soil quality and equipment, would be economically viable if provided the opportunity to adjust to changing market conditions. These enterprises too could be provided over a transitional period with an individually determined degressive subsidy. If these measures are kept strictly limited to potentially viable enterprises, a certain production capacity could be guaranteed in these marginal areas.

Then there are the so-called buying-out regulations, under which agricultural land in marginal areas is taken out of production and used for other purposes: extensive grazing, nature reserves, landscape parks, recreation areas and forestry. The potential for such uses can, however, easily be overestimated. Especially in marginal areas, the demand for special nature reserves is comparatively small, unless they are on a very large scale. Forestry projects require high initial investment and it is questionable whether they would be remunerative on poor, marginal soils. All these forms

[14] *Green Paper*, op. cit., pp. 55-62.

of land-use have in common that they create little employment, but fit into weekend or leisure activity.

In addition there are regulations to stimulate the preservation of traditional methods of agriculture in certain areas for reasons of nature conservation or countryside protection. Most of the current regulations in this field offer farmers compensation for the application of agricultural methods that are supposed to serve rural and ecological values. It is questionable whether these measures to preserve handed-down agricultural practices in fact achieve the desired aim. Certain classical agricultural practices may have been friendly to the environment in the past, but this is no longer necessarily the case. In marginal areas, too, irreversible changes have taken place to the environment by means of drainage, soil enrichment or air pollution. Nor are traditional production methods always friendly to the farmer, since they may entail working conditions that are not longer acceptable.

In the long run there is more to be said for defining the desired positive effects of the regulations to promote nature conservation and, where possible, to quantify them, and to remunerate farmers appropriately according to their results. If natural diversity is an ecologically important objective, farmers can be paid for the number of species they maintain and the number of habitats they create. Unlike the traditional, conservation-oriented approach, a goal-oriented strategy would provide environmental and agricultural experts and farmers themselves with a challenge to devise new methods for the preservation of existing features. The compensatory payments in the Community regulation for hill-farmers go in this direction. The United Kingdom affords some good examples of what can be achieved in farming to preserve and improve the countryside.

This conversion to other forms of agricultural use and the preservation of the countryside and natural environment should qualify for Community financial support, since these uses would limit the adverse social and demographic consequences for the marginal areas of a more market-oriented price policy. They would help prevent the accentuation of geographical disparities in living standards and growth prospects and, finally, serve goals the positive effects of which are not confined to national boundaries.

For marginal areas it is also proposed that the cultivation be stimulated of products not (yet) in surplus, such as oil-yielding and protein-rich crops. In the absence of protection at the external borders price support could, however, impose considerable demands on the Community budget, apart from which soils that are marginal for surplus crops are generally also marginal for other crops. Limited possibilities are afforded in the case of specialized agricultural products that do not lend themselves to production by means of modern techniques, such as certain sorts of wine, cheeses, and meat and other 'natural' or 'craft' products. A weak spot in the commercialization of these products is that so far they have been inadequately protected against imitation. A comprehensive system of protected Community marks of origin and trade names would strengthen the market position of these specialities in the interests of both the consumer and the producer. The market for these products would, however, never be particularly large.

Finally there are social measures with which (at least for the time being) the undesired consequences of farm closures can be ameliorated. In the case of older farmers, the social consequences can be absorbed by Community farm business termination regulations supplementing national social arrangements. For younger owners or tenant farmers whose farms are not economically viable in the long term, a system of Community income supplements could help ensure that declining earnings were kept at an acceptable minimum. A measure of this kind, which would amount to keeping economically non-viable production capacity in use for other than economic grounds (e.g. social, demographic or countryside protection reasons), would serve to limit and slow down the erosion of agricultural activity in weaker areas, but would not provide any opening for other activities with better long-term prospects. If excessive production capacities were to be kept up in

this way, this would aggravate the adjustment problems in other areas. Striking a responsible balance will not therefore be simple.

The above measures could, in various combinations, alleviate the problems that marginal areas would face under a more market-oriented price policy. The central problem here resides in the fact that whereever agriculture is viable, the agricultural population forms only a small fraction (generally less than 10 per cent) of the total working population, while the figure in marginal areas is considerably higher - sometimes over 30 per cent. Policies designed to maintain the existing structure of production and level of employment in these areas would be as expensive as they were economically futile and would ultimately prove inadequate in a social sense as well. The problem of the marginal agricultural regions must therefore be placed in a broader context than that of agricultural policy alone. At issue is the creation of a social and economic structure that can wholly or partially replace the long-standing agricultural structure. Community programmes to improve the infrastructure, for the training and retraining of the working population, and to build up and maintain facilities to support industrial activities and services will need to flank the Community measures in the field of agriculture. Experience in the south-east of the Federal Republic of Germany indicates that the widely distributed development of industrial activities and services creates possibilities for agriculture as a sideline or leisure pursuit. In this respect agricultural activities can be encouraged of a less commercial nature and more oriented towards countryside, nature and the environment. In the so-called integrated programmes being prepared and implemented by the Community, especially in Mediterranean areas, the industrial and services sectors will require considerable attention. In those circumstances they can form a significant element in policies directed towards redressing geographical disparities in living standards and growth prospects.

Compensatory geographical redistribution in favour of remaining marginal areas would create substantial allocation problems. Even the most prosperous and industrialized Member States have their weak agricultural pockets, but the resources would have to be concentrated on the more peripheral areas of the Community where the problems are greatest, both quantitatively and qualitatively. The more prosperous central part of the Community will essentially have to solve its marginal agriculture problems itself, and is also better placed to do so. The overall allocation problem will therefore have to be solved in a wider context than that of agriculture alone; indeed only in this wider setting will a solution be possible. These form additional arguments for releasing the CAP from the political and policy isolation in which it has operated to date.

A second allocation problem concerns the highly divergent nature of the regions that would qualify for compensatory support. This means that the determination of a single Community policy for all the regions in question would lead to barely justifiable over- and under-allocation. A solution to this problem can be found by developing an arsenal of potential intervention instruments at Community level, whereupon the Commission and the agencies in the Member States concerned could draw up a package of measures appropriate to each region (subject to certain financial margins) after due consultation with Community agencies. A differentiated arrangement of this kind could if necessary incorporate a requirement for own contributions on the part of the Member States concerned. Specific regionalized programmes along these lines conducted in vertical co-operative co-ordination between the Community and the Member States need not create problems for the unity and effective functioning of the market for agricultural products since the measures they comprise would not relate to the free movement of those products.

5.3.4 *Administrative arrangements and resources*

As discussed in section 5.2.2, a complete adjustment of agricultural prices to world levels is not possible, since this would entail excessive short-term price instability. A certain degree of buffering by means of a system of variable agricultural levies and restitutions at the external borders of the Community will remain required in order to dampen excessive price fluctuations in the short-term and to permit rational farm management. Prices will, however, have to adapt to world levels in the long term at a level at which the equilibrium between agricultural import levies and export restitutions would no longer be structurally disrupted, with all the consequences this would have for the Community budget.

The policies proposed would moreover enable the existing CAP regimes, with their complicated system of guide prices, derived guide prices, threshold prices, guarantee prices and the derived guarantee prices to be drastically simplified. The monetary compensation amounts would also lose their justification and the benefits/payments problem increasingly at issue under current market policies would disappear. Once it has been decided in principle to adopt a more market-oriented agricultural policy, the continued administration of the CAP regimes will throw up considerably fewer decision-making burdens than at present. By contrast, the management and application of measures to accompany a gradual adjustment of prices could severely tax the Community's decision-making capacity during the transitional period. That period could well take ten years or more. A period of this length would be needed not just in order to provide farmers in the central areas with the opportunity to adjust their investment to the new, more market-oriented conditions, but also for the considerable reorientation of policy that would be required in marginal areas. In order to prevent a lengthy period of uncertainty, it would be advisable to decide in broad outline upon the measure required, together with their ending date, and to leave their further elaboration and application to the Commission. Decision-making in the Council could then be confined to incidental corrections to the Commission's executive policies. Such a system would help ensure the unity and consistency of the transitional regime.

The most awkward aspect consists of the formulation, elaboration and application of the combination of compensatory measures for backward agricultural areas with growth prospects and for areas in which the introduction of market-clearing prices would further marginalize agricultural production. In this respect the Council will have to make some basic pronouncements, and the more prosperous Member States, in particular, would have to see beyond the confines of the CAP as such. Failure to do so would place the unity and openness of the internal market for agricultural products in jeopardy, which would in no way serve the interests of their own, advanced agriculture. The risks of an excessively timid approach to agricultural policy as a distributive problem for the internal market for industrial products and for the industrial policy of and within the Community were outlined at the end of the previous chapter. If agreement can be reached on the geographical orientation of compensatory common agricultural policies, the Council can decide from year to year on the overall scale of the resources for redistribution when drawing up the Community budget. The elaboration of packages of measures for individual problem areas can (subject to a certain degree of retrospective control by the Council) be entrusted to the Commission, which would then consult the Member States concerned. The often technical nature of the problems in the individual programmes does not lend itself to decision-making in Council, which could more profitably confine itself to determining the general set of policy instruments and the margins within which the Commission would be required to operate in applying those instruments.

The CAP as outlined above would mean that agricultural structure policies would have to be largely communalized, since autonomous national

measures to improve and expand the area under cultivation would have particularly serious disruptive effects for unsupported producers under a more market-oriented agricultural policy. For this reason the Community will have to strengthen and sharpen its (negative-integration) surveillance of state aid in the agricultural sector. With minor adjustments, the recommendations made in this respect for industry in section 4.3 may also be applied for assessing wholly or partially government-funded agricultural structure policies.

The fact that the wealthier and genuinely marginal agricultural areas have been discussed separately might be taken as implying that separate policies were required for the intermediate, transitional areas. The proposed policy would, however, be by way of a continuum, since uniform prices would apply throughout the EC and state aids would be subject to the same Community control. The only difference would be that the more marginal and peripheral areas would have a greater claim on support from EC funds.

Another problem consists of the financing of the measures that would be required in marginal areas to facilitate more market-oriented policies throughout the EC. Initial, rough calculations provide the following picture.

Agricultural producers in the marginal areas are at present able to continue their precarious existence, partly thanks to the hidden support from consumers via high intervention prices. Under more market-oriented policies, a sum of this order could be used for the targetted compensatory measures in these areas. In rough terms the following sum would be involved. Marginal lands in the EC make up around 30 per cent of the total area, but such is the disparity in productivity that this 30 per cent accounts for only 10 per cent of the total value of production [15]. If, under more market-oriented policies, the average drop in prices for agricultural products is put at 15 per cent, there would then be a hidden transfer of income of 1.5 per cent of the value of agricultural production in the EC. Sums of this order could be financed without any difficulty out of the reduction in Community expenditure on the agricultural Guarantee Fund, which currently accounts for 13 per cent of the value of agricultural production in the EC and would substantially decrease under more market-oriented policies. The gap between these two sums also serves to illustrate just how much the present budget is swallowed up by the measures required to dispose of over-production and how little the material benefits are in terms of guaranteeing a reasonable standard of living in the marginal areas of the Community.

It has been argued above that reform of the CAP would need to be accompanied by policies designed to stimulate industrial activities and services. It is difficult to estimate the costs of doing so, but they could appreciably exceed the sums currently channelled to the marginal areas by means of price support. Because agricultural policy objectives would also be at issue, the EC Treaty would not prevent funding by means of a Community levy or a special surcharge on VAT on agricultural products. Given an average reduction in prices of at least 10 per cent and a total value of production of 150 billion ECUs, there would certainly be ample room for such funding. This would in turn release more of the present EC budget for non-agricultural purposes. There would be every justification for such a levy or surcharge, since the lion's share of the reduction in prices under a market-oriented policy would benefit the consumer and hence the industrial and services sectors in the more prosperous sections of the Community.

[15] *Green paper*, op. cit., statistical annex.

6. FINAL CONCLUSIONS

6.1 The unfinished integration and institutional problems

6.1.1 *The context*

The institutional structure of the Community has so far been touched on only in passing in relation to the substantive problems of the unfinished integration. Given the numerous studies and reports issued on this subject over the past fifteen years, a separate analysis of the institutional problems would have been unlikely to cast much fresh light [1]. Moreover, such an analysis would, in the WRR's view, not lead far since the actual nature of the Community's institutional structure will ultimately depend more on the substantive requirements it has to fulfil than on political views about the desired structure, which vary considerably both among and within the Member States.

The central problem consists of the fact that the Community's institutional structure was originally established as a superstructure to a process of integration designed to take place primarily through the market, that is, by means of negative integration. This system began to display weaknesses when the need for positive integration turned out to be a good deal more wide-ranging than had been assumed when the EEC Treaty was drawn up and as the national interests at stake in the integration process grew more pronounced with the expansion of government responsibilities. The concentration of decision-making in the various Councils of Ministers, the increasing influence of national administrators in the decision-making mechanism and the application of the unanimity rule to virtually all Council decisions of any substance, reflect the continuing growth of the national 'interventionist' state during the 1960s and 1970s. Where an ever-increasing requirement for positive integration had to be fulfilled by a steadily less flexible decision-making mechanism, substantial deficits in the minimal degree of policy co-ordination required within the Community were the predictable outcome.

It was suggested in the last two chapters that the minimum solutions required for the substantive problems facing the internal market and the Common Agricultural Policy (CAP) will considerably increase the need for positive integration. The deficits in the present institutional system will, in these circumstances, weigh even more heavily and ultimately impede a solution to the substantive issues described in this report.

The Community decision-making mechanism displays three fundamental shortcomings. The completion of the internal market and the reform of the CAP will require numerous decisions on the part of the Community. These decisions shaping the nature of the internal market and the future direction of the CAP will impinge on significant national powers and sensitive areas of national policy. There would appear no prospect of such decisions being taken properly and in good time if the *unanimity rule* continues to apply in Council.

---

[1] Report of the *ad hoc* working group for examining the question of the expansion of the European Parliament's powers ('Vedel Report'), *Bulletin of the European Communities*, Suppl. 4/72.
Tindemans Report, *Bulletin of the European Communities*, Suppl. 1/76.
Report on the operation of the Community institutions (Report of the Three Wise Men), *Bulletin of the European Communities*, 1979/11, section 1.5.1 and 1.5.2.

The history of the CAP reveals the inadequacy of the Community decision-making mechanism when it comes to the systematic shaping of market developments and conditions. The real obstacle here consists of the *highly inter-governmental nature of Council decision-making* and the dominant role of national experts in that process. Even if majority voting were to be accepted, the Council would not be capable of dealing with the substantive and organizational issues associated with systematic, shaping policies. The number and detailed nature of the decisions to be taken, and the often complex interrelationships between the separate decisions, far exceed the decision-making capacity of the Council and its preparatory body, the Committee of Permanent Representatives; any systematic policies of this kind to be administered by the Council are therefore bound to get bogged down and be ineffective.

A process of economic integration among highly developed mixed economies goes to the heart of the powers exercised by national governments. As the need for policy integration becomes more acute, this process will impinge more heavily on contentious areas of domestic policy. Where the process of integration requires a substantial transfer of powers to Community level, or where the exercise of those responsibilities will have to be more closely tied to Community co-ordinating powers, *the need for democratic legitimation* for the policies administered by and within the Community will become acute.

These three difficulties are so closely inter-related that they as it were call for blueprint solutions under which the present Community institutional structure would evolve in a pre-federal or federal direction. The draft Act on European Union prepared and accepted by the European Parliament in 1985 forms an (in many ways remarkable) example of such an approach [2]. At the present stage of the process of integration, however, it is no more possible to fall back on the theoretically optimal allocation of powers in pre-federal or federal systems in dealing with the institutional problems than it is in dealing with the substantive problems of the Western European process of economic integration. As long as there continue to be major differences of view among the Member States on the more long-term goals of the process of economic integration in Western Europe, it is improbable that the national governments concerned will be either willing or able to act as a constituent assembly for a Community with marked pre-federal or federal characteristics. It is moreover questionable whether such a supra-national structure would be viable. Economic integration does not as such create a state. Therefore it would, in seeking solutions to the substantive and institutional problems currently manifesting themselves in the integration process, be inappropriate to fall back on constructions presupposing the very quality the Community lacks, namely that of a 'state' [3].

The dynamism of the integration process has already resulted in the transfer of fundamental government responsibilities from the Member States to a super-imposed level. This gradual shift in responsibilities and powers will undoubtedly be speeded up as the internal market is finished and come to bear more directly on traditional areas such as foreign policy (in relation to the common commercial policy), internal security (in relation to the free movement of persons), defence (in relation to industrial policy) and

---

[2] *Draft Treaty on European Union*, adopted by the European Parliament on 14 February 1984, OJ 1984, C 77/33-52.

[3] H.P. Ipsen, 'Zum Parlaments-Entwurf einer Europaischen Union', *Der Staat*, Vol. 24 (1985), Vol. 3, pp. 325-349.
T. Koopmans, 'De Europese Gemeenschappen en het Nederlandse staatsbestel' (The European Communities and the Dutch Constitutional System), *RM-Themis* 4/5 (1980), pp. 362-377, esp. pp. 375-376.

budgetary policy (in relation for example to the harmonization of taxes). In significant areas of government responsibilities, the process of integration will in fact render the Member States and their parliaments impotent.

A solution to the resultant issues of loss in capacity to act and deficient democratic legitimation will necessarily have to take the main features of the current Community system as its starting point. At first sight, a problem-oriented approach building on the present arrangements would appear to lead to second- or third-best solutions. These do, however, have two advantages over theoretically optimal solutions that should not be underestimated. These are that they more readily permit consensus formation among the Member States and that they leave the future of West European economic integration more open than would a definitive blueprint along federal or confederal lines. The partial nature of the integration and the exceptional context (characterized by diversity rather than unity) in which it is taking place, mean that a new approach is required for solving the institutional problems in the Community.

6.1.2 *Strategies for solution*

6.1.2.1 Relaxing the unanimity rule

Abandonment of the unanimity principle for Council decision-making is a long-standing aim that finds its justification not just in the EEC Treaty but in the increasingly deadlocked nature of Community decision-making. While achieving a simple or a qualified majority in a Community of twelve will certainly not be easy, abandonment of the unanimity rule would certainly increase the potential for effective decision-making. Council members would have to become more flexible; the threat of being placed in a minority position would make it less easy to stick rigidly to standpoints based on national interests. For the Commission, more fluid and flexible decision-taking would re-open the possibility of playing the role envisaged for it under the Treaty as an initiator and 'engine' of Community decision-making. The Commission is much better placed than the Council (where decision-making is compartmentalized in the departmental Councils) to watch over the substantive cohesion of decisions in various fields. If the Commission is to re-assume the position envisaged for it by the founding fathers of the Community, it will need to give greater prominence to its own policies towards the common market and to defend them more vigorously upon the change in the Presidency of the Council every six months. Only in this way would a Community legislative policy (as discussed in chapter 4) have any chance of succeeding in a more complete internal market. Community interests would then achieve an identity of their own alongside the divergent national interests. If this were to be achieved by means of interaction between the Commission and the European Parliament, this would be wholly consistent with the nature of the institutional system of the Community as originally envisaged.

The Single European Act proposes a number of amendments to the EEC Treaty that would go some distance in this direction. For the majority of the Treaty provisions relevant to the completion of the internal market, for example, the unanimity would where it exists be abolished [4].

In itself, a case-by-case review of the practice of unanimity voting has the merit of enabling an obstacle to be removed where it causes serious obstruction, without at the same time requiring a wholesale debate of the practice of majority voting as it now stands. The adoption of such a strategy does,

[4] Conference of the Representatives of the Member State Governments, *Single European Act*, conf.-RGEM 4/86, Brussels 27 January 1986, Article 6.

however, mean that it needs to be applied systematically in each sector of policy. From the viewpoint of substantive policy co-ordination, there is little to be gained from abolishing the unanimity requirement in relation to one aspect of policy while retaining it for other, functionally related aspects. For this reason it is a matter for regret that some of the Member States, including the Netherlands, managed to contradict themselves when they vigorously supported the *partial* abolition of Treaty provisions of relevance for the finishing of the internal market. This applies in particular to the approximation of indirect taxes and excises, where adherence to the principle of unanimity will present a serious obstacle to the free movement of goods and services and hinder the liberalization of goods transport [5].

6.1.2.2 Delegation to the Commission

Greater flexibility in Council decision-making will not in itself be sufficient to satisfy the requirements for a minimum degree of positive integration in a more complete internal market and a reformed CAP. Wherever any form of procedural policies on the part of the Community is required, the Council will not be able to escape the delegation of powers to the Commission on a considerable scale. In doing so the Council can specify the aims, instruments and financial constraints, but will have to leave the necessary implementing regulations and concrete decisions to the Commission. The Council would of course retain the power to effect retrospective and general adjustments to the margins in which the Commission was required to operate. The EEC Treaty (Article 155) leaves sufficient room for such a delegation of powers, while the Single European Act would provide a more explicit legal basis.

A closely related aspect is the need to strengthen surveillance of the fragmented implementation at national level of Community policy and of the observance of co-ordinating regulations agreed by the Community. Enlarging the unity and cohesion of Community policy obviously makes sense only if these aspects are also safeguarded at the implementation stage. A strengthening of the Commission's supervisory powers would not require amendment of the Treaty; it would instead be up to the Council to create the necessary scope and provide the funds required.

The necessity emphasized above of strengthening the position of the Commission, especially in relation to procedural policies where the Commission will have to play a leading role, does not mean a break with the institutional system as provided for by the founding fathers. It would, instead, be facing up to the consequences of the relative growth in importance of positive integration over negative integration since 1958. Given the fact that certain forms of national intervention would cease to be possible in a finished market, and that adequate compensation for those lost powers would have to be sought at Community level, an unwillingness to accept those consequences would mean the Member States would have to accept the disappearance at Community level of certain policies at present conducted at national level.

This link between the substantive and the institutional problems of the unfinished integration was insufficiently acknowledged in the recently concluded negotiations on amending the EEC Treaty [6]. Upon each step towards fur-

---

[5] *Single European Act*, ibid., Article 17, maintaining the unanimity principle for the application of Article 99 EEC. A similar basic error is contained in Article 16 paragraph 2 of the Act, where the unanimity rule is maintained for directives concerning the training requirements and conditions of access to the professions.

[6] *Single European Act*, ibid.; while Article 10 provides for a supplementary general legal basis, the authors of the Treaty have taken insufficient account of the fact that the creation of greater scope for delegation is not sufficient to ensure that those powers will actually be used. Thus the proposed new Article 100 A EEC fails to include a provision serving to limit the Council's powers to lay down the principles for the Community's harmonization activities. The lack of such a provision will form a serious practical obstacle to the realization of the internal market by 1992.

ther finishing the internal market and towards elaborating the secondary supporting policies, the Member States will need to consider whether the nature of the policies in question in fact require a delegation of powers to the Commission. The apparently self-evident solution of restricting decision-making to the Council in order to protect national interests can otherwise have the undesired effect that the Community policies required to protect those interests fail to get off the ground.

6.1.2.3 Parliamentary democratic control

The application of the unanimity rule has undoubtedly placed decision-making in the Council on a more inter-governmental basis, thereby increasing the ability of national parliaments to exert influence on the Community decision-making process. This does not, however, automatically lead to improved democratic control over that process, for the influence exerted by national parliaments is primarily negative in nature. They can obstruct or delay Council decisions - as shown in the difficulties in reaching a common fisheries policy - but what they cannot do (or only with great difficulty) is to ensure that desired decisions are taken. Seen in this light the strengthening of the influence of national parliaments can contribute to further stagnation in policy integration at national level and to the further erosion of public capacity to act within the Community [7]. As such, the argument in justification of the unanimity rule that it serves to ensure parliamentary democratic control over Community policy - in itself at variance with the structure of the Community institutional system - does not stand up to scrutiny.

Abandonment of the unanimity rule and the expansion of the Commission's policy powers would admittedly remove the veto power of the national parliaments, but these steps would also create the conditions under which parliamentary democratic control could be better exercised *at Community level*. Under the institutional structure of the Community, the European Parliament's main potential powers lie in the political control it is able to exert over decision-making and implementation by the Commission [8]. As the influence of the Commission over decision-making in the Council grows and its own policy powers are widened, the areas in which the European Parliament can exert effective control will grow at the same time. The Commission will need to concentrate in its efforts to expand its powers accordingly.

The experience of the last twenty-five years indicates that the political margins for the process of economic integration in Western Europe are ultimately determined collectively by the Member States. The real object of democratic control at Community level is the Community policy conducted within these margins, which needs to be broadened. The Community institutional system displays a characteristic tension between national and inter-governmental elements on the one side and Community and supra-national elements on the other - a tension reflected in the division of substantive powers between the Community and the Member States.

The evolution of the institutional system and substantive powers of the Community in a more federal direction would undeniably have theoretical

---

[7] The United Kingdom and Danish Parliaments, in particular, have expressly reserved their powers in relation to the conduct of their ministerial representatives in the Council.
Cf. J.D.B. Mitchell, S.A. Kuipers and B. Gall, 'Constitutional Aspects of the Treaty and Legislation relating to British Membership', in: *Common Market Law Review*, 1972, vol. IX, pp. 134-166.
O. Due and Cl. Gulmann, 'Constitutional Implications of the Danish Accession to the European Communities', in: *Common Market Law Review*, 1972, Vol. IX, pp. 256-270.

[8] Cf. P.J.G. Kapteyn, in: P.J.G. Kapteyn en P. VerLoren van Themaat, *Inleiding tot het recht van de Europese Gemeenschappen*, Deventer, Kluwer, 1980, pp. 96-99.
K. Pöhle, in: Von der Groeben et al., *Kommentar zum EWG-Vertrag*, op. cit., Vol. I, p. 47-57.
H.P. Ipsen, op. cit., pp. 339-345.

advantages since it would mean that many of the second and third-best solutions advanced in this report could be replaced by optimal solutions. However, in the absence of a basic consensus between the governments of the Member States on the desirability of such a solution for the way in which integration should proceed, there would be little point in solving the tension between Community and inter-governmental elements by expanding the European Parliament's powers of control over decision-making in the Council [9]. Even if the least radical solutions were to be adopted, the requirements that the process of integration will impose on the Community decision-making mechanism in the near future render it probable that the Commission's role will become more wide-ranging and that the Council will have to confine itself to providing a broad political steer. It is here that the Parliament's real potential to strengthen its control over Community policy lies [10].

6.1.3 *The Court of Justice and the legal order of the Community*

6.1.3.1 Background

Repeated reference has been made in this report to the rulings of the Court of Justice as a factor radically affecting the process of integration. No review of the unfinished process of integration and the Community's institutional problems would be complete without a brief sketch of the position occupied by the Court in the process of integration under the Community treaties and of the problems encountered in this respect.

The Court's position rests on three principles, two of which the Court has itself derived from the Treaties.

The first principle is the interpretation of the Community structure as provided for under the Treaties as an independent legal order, the rules derived from which take precedence over any national regulations with which they conflict. As a result, judgements about the relationship between Community law (and about the resultant obligations for the Member States) and national law are removed from the national legislative and constitutional sphere. By arrogating this power to itself, the Court ensured that the principle of uniformity and equality in the application and interprestation of Community law would be preserved [11].

The second principle is that Treaty provisions imposing unconditional and sufficiently well-defined obligations on the Member States are directly enforceable. Private individuals have a right of appeal in national courts where national rules are in conflict with directly enforceable Community law, in which case, under the first principle, the national courts are bound to annul the national rules [12].

The third principle is the co-operation under Article 177 EEC between na-

---

[9] Cf. the Draft Treaty on European Union, Articles 36-38.
See also R.H. Lauwaars, 'De Europese Unie: Het ontwerp-Verdrag van het Europese Parlement en het rapport van het Comité-Dooge' (The European Union: The European Parliament's Draft Treaty and the Dooge Committee's report), in: *Sociaal-Economische Wetgeving*, June 1985, Vol. 33 no. 6, pp. 398-409.

[10] H.P. Ipsen, op. cit., pp. 336-340, notes correctly that the Commission's position as the Community's executive does not emerge clearly enough in the Draft Treaty on European Union. The same applies *mutatis mutandis* to the Single European Act.

[11] CJEC, 15 July 1964, 6/64, *Costa v. E.N.E.L.*, ECR (1964), 143.
CJEC, 17 December 1970, 11/70, *Internationale Handelsgesellschaft*, ECR (1970), 1125.
CJEC, 9 May 1978, 106/77, *Simmenthal*, ECR (1978), 629.
R. Kovar, 'The relationship between Community law and national law', in Commission of the European Communities, *Thirty years of Community law*, European Perspectives Series, Luxembourg, Office for Official Publication of the European Communities, 1983, pp. 109-149, esp. pp. 111-130.

[12] First expressed in CJEC, 5 February 1963, 26/62, *NV Van Gend en Loos v. Nederlandse administratie der belastingen*, ECR (1963), 1.
R. Kovar, *op. cit.*, pp. 145-158.

tional courts or tribunals and the Court of Justice in order to ensure the uniform interpretation and application of Community law. This pillar has grown in importance since the Court of Justice extended the doctrine of direct enforceability and the scale and scope of secondary law - i.e. regulations and directives - increased [13].

On the basis of these three principles a legal system has evolved in co-operation between the Court of Justice and national jurisdictions that has given the Community legal order an identity of its own, at both national and Community level, thus providing the West European process of integration with a decided legal slant [14]. No account of the outlook for this process can afford to ignore this characteristic identity.

The fact that the Community's separate legal order shapes the process of economic integration in Western Europe and monitors the results achieved, means that the process has achieved a high degree of inherent stability and dynamism. Stability, because the Community's separate legal order safeguards the *acquis* or integration achieved to date from the vagaries of economic developments and changeable political insights; and dynamism, because market actors have obtained individual rights and entitlements under the Community's own legal order, the scale and scope of which are determined by the Court, and which they can then use to oppose various measures and regulations at national level. The key position occupied by the Court of Justice therefore means that the West European process of integration is partly one of on-going legal development between judicial bodies and agencies coming under their jurisdiction, and that this process takes place in isolation from the fluctuations in political thinking amongst Community and national policy-forming bodies.

6.1.3.2 Obstacles

The conspicuous role that the Court of Justice has accorded to Community law as the vehicle for economic integration makes it necessary to examine potential obstacles and difficulties in the operation of the Community legal order. If nothing else, continued progress towards integration will depend on the extent to which the effective operation of the Community legal order can be guaranteed.

The most important obstacle is undoubtedly the relationship between negative and positive integration. This has been discussed above largely in political, administrative and economic terms, but it also has a juridical dimension. The major judgments handed down by the Court of Justice relate particularly to the interpretation of the negative-integration provisions in the EEC Treaty [15]. The Court's jurisprudence examines the mutual compatability of those provisions, elaborating them in the light of the objectives

---

[13] Dutch judicial bodies alone have turned to the Court of Justice with prejudicial questions on 241 occasions up to 1 March 1986, including all levels of the civil courts (cantonal courts, judicial tribunal, court of justice and the Supreme Court) and all administrative-law jurisdictions (in the beginning especially the Trade and Industry Appeals Tribunal, the Central Board of Appeal and the Tariffs Commission, and later also the Disputes Division of the Council of State and the latter's Judicial Division). The frequency with which Dutch courts have turned to the Court of Justice has risen steadily in the other Member States.

[14] Koopmans draws attention to this aspect in 'De Europese Gemeenschappen en het Nederlandse staatsbestel', op. cit., p. 372.
In the same sense: F. Jacobs and K. Karst, 'The 'Federal' Legal Order: The USA and Europe Compared - A Juridical Perspective', in: *Integration through Law*, op. cit., pp. 169-243.

[15] CJEC, 5 February 1963, 26/62 (note 12), related to the negatively integrating standstill provision of Article 12 EEC;
CJEC, 11 July 1974, 8/74, *Procureur des Konings v. B. and G. Dassonville*, ECR (1974), 837, relates to the prohibition on quantitative restrictions and measures of equivalent effect on mutual trade in the Community under Article 30 EEC;
CJEC, 21 June 1974, 2/74, *J. Reyners v. Belgische Staal*, ECR (1974), 631, relates to the prohibition on discrimination of Article 52 EEC (free right of establishement);
CJEC, 31 January 1984, joined cases 286/82 and 26/83, *Graziana Luisi and Guiseppe Carbone v. Treasury*, ECR (1984), 377, relates inter alia to the free movement of services (Art. 59 EEC) and of payments (Art. 106 EEC).

of the Treaty - often going further than the letter of the individual provisions would appear to allow at first sight. This the Court was able to do, because it found a clear mandate in the system itself and in the objectives of the Treaty. Thus the Court has eliminated significant obstacles towards negative integration: individuals' rights deriving from the Treaty have been expanded, with a corresponding increase in the restrictions on and obligations of the Member States.

Both the proponents and opponents of the prominent role that the Court has come to play have persistently misconceived its functions. Where its opponents speak of 'unfounded judicial activism' its proponents have spoken of the Court's 'dynamic and progressive' policies [16]. Both groups initially overlooked the fact that in its systematic interpretation of Community law, the Court has taken due care to ensure that it remained within the functional limits of its judicial task. The Court is empowered to interpret the mutual compatability of the unconditional obligations imposed on the Member States under the Treaty, but it cannot substitute its judgment for that of the Council or the Commission where the realization of objectives enshrined in the Treaty demand *positive action* on the part of Community agencies. The Court is not a policy body, and has never sought to act as such. In brief, the role of the Court as 'engine' of integration is subject to the limits spelled out in the Treaties. Failure to acknowledge those margins is either expecting or fearing too much of the Court.

The results achieved by the Court in bringing about and assuring the negative integration envisaged under the EEC Treaty does, however, have a drawback. Because such integration has not been promptly and adequately followed by positive integration, a broad front has been opened up in which the Community legal order can come into conflict with national administrative law. In virtually all Member States - the Netherlands included - the competent national legislative and administrative bodies tend to be remiss in assessing the implications for their powers of the rulings handed down by the Court [17]. In doing so, the risk is taken, either consciously or unconsciously, of sustaining a loss in capacity to act at national level, without any compensatory provision for those lost powers at Community level.

The second problem relates to the vulnerability of the Community legal

---

[16] Cf. L.J. Brinkhorst, annotation to CJEC of 17 December 1970, 33/70, *S.p.a. SACE v. Italian Ministry of Finance*, ECR (1970), 1213, in *Common Market Law Review*, 1971, vol. VIII, pp. 384-392, in which the 'progressive/dynamic' interpretation of Community law has rather an activist ring to it. A similar line ('creeping legislation' through the CJEC) is taken by W. van Gerven, 'Verleden en toekomst van het Europese kartelrecht in een waarden georiënteerd perspectief' (Past and Future of European Cartel Law in a Value-Oriented Perspective), in: P. VerLoren van Themaat, G.J. Linssen, B. Baardman et al., *Europees kartelrecht anno 1973* (European Cartel Law in 1973), European Monographs Series no. 16, Deventer, Kluwer, 1974, pp. 175-214.
P.J.G. Kapteyn, in Kapteyn and VerLoren van Themaat, op. cit., pp. 113-115, correctly notes the risks associated with over-stressing the Court of Justice's jurisprudential role. In a similar sense: H. Rasmussen, 'The Court of Justice', in: *Thirty years of Community law*, op. cit., pp. 151-194, esp. pp. 190-194.

[17] The list of Dutch rules that have proven to be incompatible with Community law and have consequently had to remain inoperative is a lengthy one. Cf. *inter alia* CJEC, 24 January 1978, 82/77, *Public Prosecutor of the Kingdom of the Netherlands v. J.P. van Tiggele*, ECR (1978), 25.
CJEC, 16 December 1980, 27/80, *Public Prosecutor v. A.A. Fietje*, ECR (1980), 3839.
CJEC, 19 February 1981, 130/80, *Fabriek voor hoogwaardige voedingsprodukten Kelderman BV*, ECR (1981), 527.
CJEC, 26 February 1980, 94/79, *Proceedings against Pieter Vriend*, ECR (1980), 327.
CJEC, 17 March 1983, 94/82, *Proceedings against De Kikvorsch Groothandel-Import-Export BV*, ECR (1983), 947.
CJEC, 17 September 1980, 730/79, *Philip Morris Holland BV v. Commission of the European Communities*, ECR (1980), 2671.
CJEC, 26 November 1985, 182/84, *Proceedings v. Miko BV.*, as yet unpublished.
In all these instances it could reasonably be assumed beforhand that the Dutch regulations in question were of a highly dubious nature.

order. Community law provides for few if any sanctions against infringements by Member States. To an even greater extent than at national level, the Community legal order presupposes that those coming under its jurisdiction will comply spontaneously with its provisions. Intervention on the part of the Court of Justice in the event of infringement by Member States is provided for by way of exception, arising mainly when there are substantial doubts as to the scale and content of the obligations imposed on the Member States. One of the major dangers for the Community legal order - and hence for continued progress towards integration - is the lack of self-discipline on the part of the Member States with respect to the observance of obligations arising out of Community law. There are numerous gradations: carelessness or dilatoriness in observing Community regulations; the conscious exploration of gaps in Community law; disguised non-conforming behaviour in the expectation that it will go unobserved; and open infringements of Community law, particularly on the grounds that the interval between doing so and any ruling by the Court of Justice is likely to be so lengthy that the infringement 'pays'. When the benefit of non-conforming behaviour in terms of national policy interests is likely to be high, Member States often adopt the same sort of calculated behaviour towards the Community legal order that they deplore in their own citizens with respect to the national legal order [18].

The risks of such calculated behaviour can hardly be over-estimated. The dangers of retaliation and policy competition have already been discussed, as has the risk that a government adopting a manifestly illegal attitude towards Community law will lose legitimacy in the eyes of its own citizens. The most serious risk, however, is the potential loss in effectiveness of the relatively fragile Community legal system. If this were to happen, the Member States professing to desire continued progress towards integration would be depriving that process of its most important stabilizing factor. Policies evading the operation of Community law become dependent on the changing balance of power between the Member States and, given the lack of continuity, achieve little.

The third problem which the Community legal order encounters in practice is that the Commission lacks the necessary powers of enforcement. An analysis of the most important rulings in the field of substantive Community law indicates that the majority of these judgments arose out of proceedings instituted by private individuals against their national administrations in national courts [19]. Whether, where and in relation to what such proceedings are instituted often depends on comparatively accidental factors, such as the existence of private individuals with the stamina, financial resources and will to conduct lengthy and often expensive litigation. This means that ensuring the effective operation of Community law tends to be somewhat haphazard, not least because parties other than the national bodies directly concerned will in general have little inducement spontaneously to examine the potential implications of a Court judgment. The growth in public awareness tends to be a gradual matter as a number of judgments are handed down.

It is not satisfactory for the operation of Community law to be dependent on the initiatives of private individuals. There are sections of Community law where such initiatives are rare; private interests and Community interests in the observance of a particular regulation by no means always coincide; and, not infrequently, the ease with which the interpretation and application

---

[18] Similarly J. Pelkmans, *De interne EG-markt voor industriële produkten* (The Internal EC Market for Industrial Products), WRR Preliminary and Background Studies Series no. V47, The Hague, Staatsuitgeverij, 1985, pp. 45-47.

[19] All the 'major judgments' referred to in notes 11, 12 and 15 were handed down in prejudicial judgments. The vigilance of private individuals defending their rights under Community law has been at least as important as the supervisory role of the Commission for the enforcement and equal application of those rights. Not infrequently the Commission takes action only after the Court of Justice has broken the ice with a prejudicial judgment.

of Community law can be challenged in court varies very considerably from Member State to Member State (as reflected in the substantial geographical disparities in the effectiveness of Community law). One is therefore forced to conclude that the Community's limited powers of enforcement act as a real drawback for the effective and uniform operation of Community law [20].

6.1.3.3 Possible strategies

The importance of an effective Community legal order will certainly not diminish as progress is made towards finishing the internal market. On the contrary: as the common market is further opened up and obstacles are removed, actors in the market will become more sensitive and vulnerable to inequalities and ambiguities in the application of Community law. The effect of infringements by Member States will be more far-reaching, both for private individuals and for the remaining Member States. Even under a restrained legislative policy, the regulations promulgated by the Community are likely to increase in number and, as far as national policy is concerned, in penetration. The observations in chapter 4 leave no doubt on this score. Because no mixed economic order, whatever the balance between government and market allocation, can get by without uniformity, equality and certainty in the application of the legal norms governing the operation of the system, the integrity and functioning of the Community legal order deserves close attention in a common market moving towards completion. The Community and the Member States cannot continually afford to by-pass the consequences for government policy within the Community of the Court of Justice's liberalizing jurisprudence. Where that jurisprudence imposes limitations on policy powers, choices must be made in the field of legal policy: the Member States must either bring their national policies within the margins permitted by Community law, or they must seek to repair the breaches identified by the Court at Community level. The worst choice is the one frequently adopted in practice of muddling through with legally dubious or downright illegal measures until the Court calls a halt [21].

The significance of the Court's body of rulings for national policies is in general appreciated by only a small circle of insiders. As such it would be desirable for the Court periodically to publish a survey of its jurisprudence and to indicate the consequences it sees these rulings as having for the policies administered by the Member States. At national level this initiative could be supported by the periodic submission to the legislative and regulative agencies of the Community of a jurisprudential survey setting out the thinking behind existing or draft legislation and regulations. To date national administrations have tended to present judgments in which national regulations or administrative practices are found to be at variance with the Treaty as 'occupational hazards', even where those regulations or practices have been manifestly unlawful. A periodic survey of this kind would remove the ability to feign ignorance.

The Commission will have to approach the enforcement of Community law more systematically in terms of policy area, policy interest, anticipated (lack of) policy conformity and the consequences for the unity and functioning of the common market. The growing scale of positive Community law and the marked diversity in national administrative practice will make this task still more difficult. The establishment of an inspection agency equipped with proper powers would seem a first and useful step. This is something the Member States would have to honour; failing that, the Commission could

---

[20] Similarly H.A.H. Audretsch, *Supervision in European Community Law*, 2nd edition, Deventer, Kluwer 1985.

[21] Nor does the Netherlands emerge entirely unscathed. The facts on which the CJEC judgments of 20 May 1976, 104/75, *Adriaan de Peijper*, ECR (1976), 613 and 6 October 1981, 246/80, *C. Broekmeulen v. Huisarts Registratie Commissie*, ECR (1981), 2311, are based do not reflect at all favourably on the good faith of the relevant Dutch bodies.

make use of specialist university institutes in the Member States to monitor national behaviour in sensitive areas and to report back periodically to the Commission.

A significant obstacle towards preventing infringements of Community law consists of the laborious and time-consuming procedures provided for in Article 169 EEC, under which the Commission can charge a Member State with failure to fulfil its obligations under the Treaty. The bureaucratic stage of this process is labour-intensive and often prolonged by diversionary and delaying tactics on the part of the Member States in question. The interval between the date on which an infringement is first clearly detected and the actual point at which a formal complaint is lodged with the Court can take years. It would, therefore, be desirable for the Commission to be given the power to appeal direct to the Court of Justice against national measures that were manifestly incompatible with Community law. 'Manifest incompatibility' may derive from the unconditional and categorical nature of an obligation, such as the observance of deadlines in directives, the existence of precedents, failure to comply with procedural requirements, and so on. This recommendation derives from the nature of the rulings handed down by the Court on matters arising under Article 169 EEC: only in rare cases do judgments in this area depend on legal ambiguities requiring separate interpretation by the Court [22].

6.2 The unfinished integration and the Netherlands

6.2.1 *The Netherlands and the Community*

Dutch interests in the economic integration of Western Europe are considerable. A review was provided in chapter 3 of the interests of Dutch industry in the internal market for industrial products and of Dutch agriculture in the Common Agricultural Policy. As regards commercial services, the significance of the nascent internal market is certainly no less great than that for the industrial and agricultural sectors; indeed, over the long term Dutch interest in the completion of the internal market for services is likely to be greater than that in the internal market for industrial products. Furthermore, a statistical measure of the interests of Dutch enterprises in progress towards economic integration, in the form of current export figures to other Member States, provides a lop-sided picture. As indicated in chapters 3 and 4, the completion of the internal market will not just mean that existing and remaining barriers are eliminated, but also that the internal market will form a broader framework for the future development of Dutch industry, thereby providing it with the necessary elbow-room to adjust to the technological and economic developments taking place in the world market, and for which the domestic market is too narrow.

At the same time, this will mean that industry will be exposed to intensified competition, so that its competitiveness will ultimately be decisive in determining its ability to exploit the available opportunities. As was seen in chapter 4, Dutch industry will in the future be much less able to fall back on government support specifically tailored to its needs. The same applies in broad measure to the Dutch services sector. Here too, there will be greater opportunities for development, but official protection for the industry will largely disappear.

For Dutch agriculture (which, as a sector, has managed to exploit the op-

---

[22] As it stands, the EEC Treaty provides for two instances in which the Commission is empowered to make direct reference to the Court of Justice without administrative preliminaries. Cf. Article 93 paragraph two and Article 225 paragraph two.
The Single European Act, Article 18, provides for the introduction of a similar power on the part of the Commission or any Member State, if another Member State is considered to be making improper use of the safeguard provision in paragraph 4 of the new Article 100A.

portunities afforded by the internal market for agricultural products) the virtually inevitable reorientation of the CAP will be a matter of vital concern. It was seen in chapter 5 that the gradual introduction of quantitative restrictions could have a highly unfavourable effect on Dutch agriculture, since this will impose structural limits on the margins for adjustment and the introduction of new crops and methods of production – traditionally one of the strongest features of Dutch agriculture and horticulture. However, the alternative of more market-oriented agricultural policies would also have radical implications for Dutch producers in the long-run. While such a strategy would keep open the potential for development and expansion in Dutch agriculture, it would also demand comprehensive structural adjustment in this sector. Whatever policies are decided upon will therefore be of vital importance to Dutch agriculture.

Dutch industry has a major interest not just in continued progress towards economic integration in Western Europe, but also in the risk that it might stagnate. Individual companies and industrial organizations appear increasingly aware that stagnation in the process of integration will ultimately have a negative effect on the necessary adjustment and further development of economic activity in Western Europe generally and the Netherlands in particular. In many cases they see more clearly than the governments concerned that continued integration will create not just new opportunities but also new risks. This is, to a certain extent, a process the course of which is uncertain, both for the individual parties concerned and for leading domestic industries. The completion of the internal market creates opportunities for development but no guarantees of being able to continue on the same footing. Nor will national governments (that of the Netherlands included) be able to provide such guarantees. The importance which the common market has so far assumed for Dutch industry does, however, provide a strong indication that Dutch industry will manage to exploit the opportunities opened up as integration continues to run its course.

The interests at stake for the Dutch economy in continued progress towards economic integration render that process a vital factor in Dutch policy. Stagnation in the process of economic integration is not a natural phenomenon but something which the Netherlands can influence as a signatory to the Treaty and through its membership of the Council. There can be no question that the importance of the Netherlands as a party in the political decision-making of the Community has declined since the early 1970s, but the interests that the Netherlands has in progress towards Community economic integration, provide reason for not treating that more modest role dismissively or taking it as something routine. This is all the more true since the unfinished integration does not just affect the vital interests of actors in the market but also bears radically on the functioning and effectiveness of public bodies at national level. The unfinished integration is an issue of very immediate policy relevance – even though this may not always receive the recognition it deserves from government agencies operating in policy areas and from the private organizations concerned.

The central problem as identified in this report is that the process of economic integration in its present unfinished form has led to substantial losses in national capacity to act without adequate compensation for those losses being provided at Community level. Now that the lack of integration has failed to produce the formation of a home market providing the industrial and services sectors in the Community with sufficient room to adapt to technological developments and economic shifts in the world market, progress towards the finishing of this market has justifiably assumed high priority. However, as indicated by the analysis in chapter 4, such a step would inevitably impose further legal and practical restrictions on the public capacity to act of the Member States, *even if solutions were systematically pursued that interfered as little as possible with the present allocation of powers between the Community and the Member States.*

It is necessary for these interrelationships to be kept clearly in mind in the

current efforts to accelerate completion of the internal market and to reform the CAP. Given continuing liberalization in intra-Community traffic in products, services and factors of production, a wide range of national interventions will become even less effective than they are at present – while at the same time having an even greater capacity to disrupt the unity and functioning of the internal market than they do in its current unfinished state. If this should occur, the current impasse in the West European socio-economic system would risk consolidation, while both the internal market and government interventions would remain unable to achieve their objectives.

In its policies towards the Community, the Netherlands government could place clear stress on the following interrelationships examined in this report.

a. *The link between negative and positive integration*
Because each step towards the realization of the internal market entails a further loss in national capacity to act, the question consistently arises as to whether, and to what extent, compensation is required at Community level. This necessarily includes the question as to the corrections required to the overall and specific results of market allocation within the internal market and the resources that the authorities in question require in order to shape market processes either generally or more specifically. In brief, the desire to finish the internal market means that decisions have to be taken about the appropriate arrangement and functioning of that market.

b. *The link between the substantive and institutional problem*
The further completion of the internal market for goods and services and the reform of the CAP will require an enlargement of the policy-forming and executive capacity of the Community, even if solutions are consistently sought that tie in as far as possible with the existing allocation of powers between the Community and the Member states. This applies to both the establishment and effective functioning of the internal market for industrial goods and services, and the Community's actual (positive) policies.

The nature and functioning of the Community's institutional system will continually need to be geared to the scale of the decision-making and executive burden that the implementation of its substantive responsibilities entails. Failure to appreciate this link is a major factor in holding back the process of integration and leads to an unnecessary loss in capacity to act in the Community.

c. *The substantive link between the finishing of the internal market for industrial products, that for services and reform of the CAP*
The marked differences in the geographical distribution of economic activities, individual prosperity and development prospects, together with the real chance that progress towards completing the internal market for industrial products will accentuate rather than moderate those differences, make it essential to establish substantive links between the establishment of that market, the completion of the internal market for services and the reorientation of the CAP. The divergent interests of the individual Member States in the internal market for industrial products and that for services means that the *simultaneous* realization of the internal market for both sectors could eliminate a certain amount of resistance towards radical liberalization. In view of the significance of a Community transport market, especially for the peripheral and generally less developed Member States and regions, the creation of that market should be vigorously pursued.
The fact that the agriculturally and industrially more prosperous areas tend to coincide or be close to one another, means that any reform of the CAP in the interests of the unity of the common market for agricultural products will have to take special account of the marginal, generally peripheral areas. Failure to appreciate these substantive connections could

block progress towards integration in each of these sectors.

This means that domestic Dutch policy towards manufacturing, the services industry, transport and agriculture will have to approach these sectors as an integrated whole, if the Netherlands is to operate effectively at Community level.

6.2.2 *The Netherlands in the Community*

6.2.2.1 Policy implications

The legal and practical implications that continuing integration has already had for the national policies of the Member States will only become more pronounced as the process continues. They are of course of major significance for the Netherlands. In particular, they will affect the policies that the Netherlands is still implementing – or thinks it can implement – independently within the Community.

This aspect of the integration process, which is of major relevance for the Dutch government agencies in formulating and implementing policies, tends in political, civil-service and non-governmental quarters to be insufficiently acknowledged or, where it is, to be under-estimated.

The legal and practical consequences of the integration process are certainly not discernible in the least important areas of government policy only. The vulnerability of macro-economic policies conducted in isolation from the rest of the Community was discussed in chapter 1. Although macro-economic policies do not generally run into legal barriers (at least where there is no direct intervention in the market mechanism), the greater openness of the Dutch economy as progress is made towards an internal market, will subject those policies to more exacting practical constraints. The survey in chapter 4 of the minimum consequences of the further completion of the internal market for selective domestic policies indicates that the margins for the application of those policies will narrow appreciably – and that when they are narrow enough as they are. To take one example, the background history to the Investment Account Act (WIR) and its implementation have been marked by conflicts with the European Commission that have had a pronounced effect on the final shape of this act [23]. Similarly the Netherlands government has consistently run into the prohibitions imposed under the EEC Treaty on state aids in the promulgation and application of the numerous support measures not deriving from formal legislation [24]. As the internal market moves towards completion, the existing limitations on selective state aids and selective public procurement policies will inevitably become even tighter. In so far as such measures continue to be permitted, their effectiveness is bound to diminish in a more open internal market marked by policy competition.

The opening up of national public markets, such as that for telecommunications, has implications for the government policies conducted in and through these markets. It will also have consequences for the market behaviour of the public enterprises and monopolies active in those markets, which will find themselves operating in a different, more competitive environment.

Even in its present uncompleted state, the internal market for industrial products has had important consequences for existing Dutch legislation in

---

[23] Cf. inter alia J.A. Winter, 'De WIR bezien vanuit het perspectief van de EEG' (The Investment Account Act seen from the Perspective of the EEC), in: *Tijdschrift voor Vennootschappen, Verenigingen en Stichtingen*, 1977, pp. 349-355.
J.A. Winter, 'Europeesrechtelijke bedenkingen tegen het wetsontwerp investeringsrekening' (European Law Objections towards the Investment Account Bill), in: *Nieuw Europa*, 1978, no. 1, pp. 19-31.
L.A. Geelhoed, 'Economische steunmaatregelen in het Nederlandse en Europese recht' (State aids to industry under Dutch and European Law), in: *Ars Aequi*, XXVII (1978) 10, pp. 630-638 and 11, pp. 713-727.

[24] E.g. the judgment in the joined cases 286/82 and 26/83 referred to in note 15.

the field of trading standards, environmental protection and industrial safety in so far as these laws bear on products, even though these consequences are not always acknowledged in legislative and policy practice. The proposed finishing of the internal market as spelled out in the Single European Act will reduce the autonomy of national legislatures in these fields still further.

The finishing of the internal market for services, which has been stagnating for some time but regained renewed currency with recent rulings by the Court of Justice and the policy intentions contained in the European Act, will radically affect Dutch legislation on financial institutions and insurance companies and on the commercial liberal professions. The same applies to the policies conducted on the grounds of this legislation.

Dutch agricultural policy has been strongly oriented towards the Community since the early 1960s, and this will remain unchanged under the necessary reform of the CAP. As discussed in chapter 5, it is also not inconceivable that agricultural structure policies, which have so far been largely untouched, will be subjected to tighter Community constraints.

The Netherlands has to date vigorously supported the introduction of a (liberal) common transport policy. It needs, however, to be borne in mind that if this aim should be realized, a Community transport policy on a liberalized footing would mean that the Community had to harmonize and unify the conditions under which carriers were required to operate. Here again the national legislature will suffer a loss in its ability to act independently.

The fact that the further completion of the internal market for goods and services will ultimately also cut back freedom to act on the part of national legislatures in the field of taxation was discussed in sections 4.1 and 4.3. Even though the Member States have created substantial barriers to rapid progress by continuing to insist on the unanimity principle under Article 99 EEC, the retention of the internal fiscal borders will, in the long run, come under very considerable pressure as the last remaining barrier to the free movement of goods. A gradual further narrowing of the margins within which the Dutch legislature is still able to operate with respect to indirect taxes is therefore likely.

6.2.2.2 An additional administrative layer

From this indicative survey it is evident that numerous areas of government policy are already affected, directly or indirectly, by the unfinished process of integration and that this will become more marked in the near future.

As discussion proceeds in the Netherlands about the desirability of a fourth layer in national administration, the fact is that an additional layer has almost *superimposed* itself unobserved. It is steadily extending its scope and can - sometimes unexpectedly - make its presence felt in areas of policy which at first sight would appear far removed from the process of economic integration. Its effects extend to decision-making by the central organs of state, namely the Government and Parliament; it affects formal legislation but also the administrative practice of decentralized government agencies and lower levels of government. It extends to key documents in the Dutch political system such as the Government Policy Accords which are concluded by coalition partners when forming a cabinet, but also to decisions attracting little if any public attention, such as a commodity board decree.

The Dutch state, in its various guises, can no longer afford to make utterances and to act as if this superimposed layer did not exist. Experience indicates that ignoring the Community inevitably leads to friction and conflicts, and that important points of statutory interpretation attracting considerable Parliamentary and public attention remain without practical effect. The parliamentary democratic system will have to become more conscious of the Community context in which the Dutch state operates.

The abandonment of an inward-looking policy orientation (something not,

incidentally, confined to the Netherlands) should not necessarily be taken as a sign of weakness. Indeed, where government agencies do take account consistently and in good time of the Community context in which they operate and of the consequences of that context for their actions, their effectiveness is if anything likely to be enhanced in the long term. There is little point in promulgating unilaterally determined policy objectives if the Community context prevents the use of the necessary policy instruments on legal grounds or renders them ineffective. The timely recognition of such consequences can result in improved mutual co-ordination of goals and instruments, or lead to the launching of policy initiatives on a Community basis.

Direct legal limitations on or practical barriers towards the activities of the Dutch government will eventually have to be reflected in the conduct of the relevant government agencies. But given the comparative indifference that the legislature and executive have hitherto displayed for the unintended side-effects of their actions, it is questionable whether they will be able to make allowance for the *indirect* effects of a more completed internal market [25].

One of the most important of these side-effects is the fact that market actors in the Netherlands will become more vulnerable to the effects of government action since they are more directly exposed to cross-border competition. In a more open internal market any specific distortions brought about by unilateral government action could have a more rapid, adverse effect on the competitiveness of Dutch industry and also prompt a swifter evasive response. These derivative consequences of greater Community integration will in the long term oblige the relevant Dutch organs of government to display a good deal more caution in their dealings towards market actors than has been customary to date.

6.2.2.3 The Dutch decision-making structure

Is the present decision-making structure of the Dutch central government sufficiently geared to the superimposed administrative layer and the Community context? The picture is a mixed one. In certain specialist ministries and divisions, such as the Ministry of Agriculture and Fisheries and the Directorate General for Foreign Economic Relations of the Ministry of Economic Affairs, this is certainly the case. The intensity of the contacts they maintain with the institutions of the Community leave them little choice. In other ministries and divisions where contacts with the Community are less frequent and intensive, the Community aspects of the policies they conduct enjoy much less priority. When measures have been drafted after laborious intra- and inter-departmental negotiation and consultation with the relevant representative organizations and standing parliamentary committees and appear to be reaching the final stage, any Community complication is an unwelcome, external intrusion. This is indeed often the way government departments respond, until eventually they are pulled up short by an inevitable Court of Justice ruling. Matters are not helped by the fact that where sensitivity towards the 'hard' elements of the Community context is limited enough as it is in these sections of the government machinery, the side-effects of the process of economic integration are apt to be disregarded altogether. As progress is made towards an internal market, this means that the position of Dutch industry in that market could easily if unintentionally suffer.

The current co-ordinating structure for Dutch policy vis-a-vis the European Community is not suited to eliminating these shortcomings. The Co-ordinating Committee on European Affairs chaired by the State Secretary for Foreign Affairs, which acts as the preparatory body for the Cabinet

---

[25] Committee on the Reduction and Simplification of Government Regulations, Final Report, Parliamentary Proceedings, Lower House, 1983-1984 session, 17 931, no. 9, pp. 48-51.

Committee on European Affairs, generally finds its agenda determined by the agendas for forthcoming Council meetings [26]. This structure is more suited to determining Dutch policy standpoints *towards* rather than in the Community. The latter is predominantly left to the specialist departments and, once decided, tends to get little adjustment – a factor that can sometimes make the Dutch position in Community decision-making difficult if not untenable.

Now that the finishing of the internal market appears about to go into a higher gear, it is becoming increasingly undesirable to keep the Community context on the periphery of national policy formation. Every area of policy affected at all significantly by the on-going process of integration needs to be thoroughly reviewed in terms of the consequences for those policies of the integration process. Such a review should not just cover the bureaucratic apparatus, but should extend to the circle of interested organizations and the standing parliamentary committees. One obstacle to such a self-evident response to the broader and increasingly intensive influence of the Community framework is the lack of expertise in the field of Community policy and Community law in large areas of the central government machinery. Such expertise is mainly concentrated in the Ministries of Foreign Affairs, Agriculture and Fisheries and, to a somewhat lesser extent, Economic Affairs and Finance. The individuals concerned are generally heavily involved in all sorts of other matters, for which reason one solution would be for these reviews to be conducted under the auspices of the co-ordinating committee referred to earlier, if necessary engaging the services of outside experts. The desire to safeguard existing policies as far as possible would not necessarily mean that the surveys were lacking in realism.

The growing importance of the Community context will ultimately require the departments concerned to recruit in-house expertise and to ensure that Community factors are taken into consideration from the inception when reviewing existing policies or formulating new ones. It will not always be easy to persuade departments whose vision has rarely gone beyond the confines of their own immediate social and political environment, to be responsive to the by no means always clear signals coming from the Community. Perhaps vision will only be broadened by experience, as it becomes clear that parochialism detracts from policy effectiveness.

6.2.2.4 Working methods of the Dutch parliament

Although organizational adjustments in decision-making, the augmentation of bureaucratic expertise and acceptance of a more Community-oriented approach in the formulation and implementation of government policy may be useful, they will not provide a remedy unless there is a recognition at political level that continued economic integration has far-reaching implications for the ability of national governments to act unilaterally. This has been clearly recognized by the Special Committee on Research into the Organization and Working Methods of the Lower House [27]. Its conclusion that attention to European affairs tends to be fragmentary and that there should therefore be a Standing Parliamentary Committee for European Affairs is, however, subject to one qualification. The Special Committee notes that national parliaments are by nature inclined to weigh up interests at national level, that a strengthening of the role of these parliaments in the Community decision-making process will (potentially) increase nationalist tendencies, and that the Dutch Parliament is consequently incapable of forming an

---

[26] L.J. Brinkhorst, 'Coördinatie van Europees beleid in Nederland' (Co-ordination of European Policy in the Netherlands), *Sociaal-Economische Wetgeving*, December 1978, vol. 26 no. 12, pp. 815-828.

[27] Report by the Special Committee on Research into the Organization and Working Methods of the Lower House, Parliamentary Proceedings, Lower House, 1985-1986 session, 19 336, no. 2.

adequate substitute for a European Parliament equipped with proper powers. The Committee does not, however, appear to draw all the necessary conclusions when it argues a little later that the Lower House pays fragmentary attention to European affairs, while these are in fact policies of leading importance for significant sectors of society and over which parliamentary supervision is therefore essential.

If the Lower House should decide on the appointment of a Standing Committee for EC Affairs it would seem desirable for it to take account in its terms of reference of the two differing aspects of the Community context for Dutch policy as discussed in this report.

As regards Dutch policy *towards* the process of Community integration and the substantive links that need to be taken into account, a Standing Committee could indeed usefully monitor policy coherence and help guard against fragmentation. Monitoring the conduct of Dutch ministers in the Community institutions will need to be carried out with restraint and kept largely confined to an assessment of overall policy coherence. Any political directives arising out of this process would need to be conditional in nature if Dutch representatives in Brussels are to retain sufficient flexibility in determining their standpoint, especially upon a reintroduction of majority voting. The Danish example illustrates how being strictly tied to decisions in the national parliament can lead to rigidity and deadlock.

The Standing Committee would need a strong hand in dealing with other standing parliamentary committees (especially those charged with supervising policy in specialized departments). In so far as the latter committees pay insufficient heed to the Community context, corrective and stimulatory action by a new Standing Committee for EC Affairs might be able to produce greater unity and cohesion in Dutch policy.

It has been argued in this report that the economic integration of Western Europe cannot for the moment amount to any overt abdication of the national states, but that at the same time the continuing process of integration will mean that national states lose some of their capacity and powers to shape society by means of socio-economic and other policies.

The image of the 'interventionist state' as an actor that unilaterally determines socio-economic conditions and their development corresponds less and less with reality. The national state is also the object of developments which it is unable to influence, let alone control, by itself. Two different strategies are available for dealing with this - growing - incapacity at national level. The government can either adjust its actions to the narrower policy margins and concentrate on creating the conditions under which Dutch market actors can benefit to the fullest extent from the opportunities created by negative integration; or the Dutch government can switch its attention to the additional administrative layer as the level at which socio-economic developments are most effectively influenced. In the latter case Dutch political organs would have to accept the fact that Community policy will reflect Dutch policy preferences only partially.

The worst course of action is that in which the context shaped by economic integration is ignored. A policy that fails to acknowledge its inherent limitations runs the risk of undermining public confidence in the democratic decision-making process on which it rests. The Dutch parliamentary democracy will, in other words, have to acknowledge and accept its subordination to the Community context.

APPENDIX
Text of the EEC Treaty Articles of most importance for this report

Free movement of goods

Article 9
1. The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.
2. The provisions of chapter 1, section 1, and of chapter 2 of this title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

Article 12
Member States shall refrain from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, and from increasing those which they already apply in their trade with each other.

Article 16
Member States shall abolish between themselves customs duties on exports and charges having equivalent effect by the end of the first stage at the latest.

Article 30
Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States.

Article 36
The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Agriculture

Article 39
1. The objectives of the common agricultural policy shall be:
a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
c) to stabilise markets;
d) to assure the availability of supplies;
e) to ensure that supplies reach consumers at reasonable prices.

2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:

a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;

b) the need to effect the appropriate adjustments by degrees;

c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

Free movement of persons, services and capital

Article 48

1. Freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

a) to accept offers of employment actually made;

b) to move freely within the territory of Member States for this purpose;

c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.

4. The provisions of this Article shall not apply to employment in the public service.

Article 52

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period. Such progressive abolition shall also apply to restrictions on the setting up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 58, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the chapter relating to capital.

Article 59

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

The Council may, acting unanimously on a proposal from the Commission, extend the provisions of this chapter to nationals of a third country who provide services and who are established within the Community.

Common rules

Article 85

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of

undertakings and concerted practices which may affect trade between Member STates and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

a) directly or indirectly fix purchase or selling prices or any other trading conditions;

b) limit or control production, markets, technical development, or investment;

c) share markets or sources of supply;

d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 86

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

b) limiting production, markets or technical development to the prejudice of consumers;

c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 90

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 7 and Articles 85 to 94.

2. Undertakings entrusted with the operation of services of general economic interest or having character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

3. The Commission shall ensure the application of the provisions of this Ar-

ticle and shall, where necessary, address appropriate directives or decisions to Member States.

Article 92

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.
2. The following shall be compatible with the common market:

a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

b) aid to make good the damage caused by natural disasters or exceptional occurences;

c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:

a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment;

b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. However, the aids granted to shipbuilding as of 1 January 1957 shall, in so far as they serve only to compensate for the absence of customs protection, be progressively reduced under the same conditions as apply to the elimination of customs duties, subject to the provisions of this Treaty concerning common commercial policy towards third countries;

d) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

Article 93

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.
2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 92, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 169 and 170, refer the matter to the Court of Justice direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of Article 92 or from the regulations provided for in Article 94, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of

suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

Tax provisions

Article 99

The Commission shall consider how the legislation of the various Member States concerning turnover taxes, excise duties and other forms of indirect taxation, including countervailing measures applicable to trade between Member States, can be harmonised in the interest of the common market.

The Commission shall submit proposals to the Council, which shall act unanimously without prejudice to the provisions of Articles 100 and 101.

Approximation of laws

Article 100

The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market.

The Assembly and the Economic and Social Committee shall be consulted in the case of directives whose implementation would, in one or more Member States, involve the amendment of legislation.

Article 101

Where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member states is distorting the conditions of competition in the common market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.

If such consultation does not result in an agreement eliminating the distortion in question, the Council shall, on a proposal from the Commission, acting unanimously during the first stage and by a qualified majority thereafter, issue the necessary directives. The Commission and the Council may take any other appropriate measures provided for in this Treaty.

Conjunctural policy

Article 103

1. Member States shall regard their conjunctural policies as a matter of common concern. They shall consult each other and the Commission on the measures to be taken in the light of the prevailing circumstances.
2. Without prejudice to any other procedures provided for in this Treaty, the Council may, acting unanimously on a proposal from the Commission, decide upon the measures appropriate to the situation.
3. Acting by a qualified majority on a proposal from the Commission, the Council shall, where required issue any directives needed to give effect to the measures decided upon under paragraph 2.
4. The procedures provided for in this Article shall also apply if any difficulty should arise in the supply of certain products.

Commercial policy

Article 115

In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more of the Member States, the Commission shall recommend the methods for the requisite cooperation between Member States to take the necessary protective measures, the conditions and details of which it shall determine.

In case of urgency during the transitional period, Member States may themselves take the necessary measures and shall notify them to the other Member States and to the Commission, which may decide that the States concerned shall amend or abolish such measures.

In the selection of such measures, priority shall be given to those which cause the least disturbance to the functioning of the common market and which take into account the need to expedite, as far as possible, the introduction of the common customs tariff.

Social policy

Article 119

Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.

For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

Equal pay without discrimination based on sex means:

a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

b) that pay for work at time rates shall be the same for the same job.

The Court of Justice

Article 169

If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

Article 177

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

a) the interpretation of this Treaty;

b) the validity and interpretation of acts of the institutions of the Community;

c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court of tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

Article 235

If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures.

The Council has published the following Preliminary and Background Studies (in Dutch)

First term of office

V 1 W.A.W. van Walstijn, Kansen op onderwijs, een literatuurstudie over ongelijkheid in het Nederlands onderwijs *(Educational Opportunities: a Literature Study of Inequality in the Netherlands Educational System)* (1975)

V 2 I.J. Schoonenboom en H.M. in 't Veld-Langeveld, De emancipatie van de vrouw *(Women's Emancipation)* (1976)

V 3 G.R. Muster, Van dubbeltjes en kwartjes, een literatuurstudie over ongelijkheid in de Nederlandse inkomstenverdeling *(Dimes and Quarters: a Literature Study on Inequality in the Distribution of Income in the Netherlands)* (1976)

V 4 J.A.M. van Weezel a.o., De verdeling en de waardering van arbeid *(The Distribution and Appreciation of Work)* (1976)

V 5 A.Ch.M. Rijnen a.o., Adviseren aan de Overheid *(Advising the Government)* (1977)

V 6 Verslag Eerste Raadsperiode 1972–1977 *(Report on the First Term of Office)* (1972–1977)*

Second term of office

V 7 J.J.C. Voorhoeve, Internationale Macht en Interne Autonomie *(International Power and Internal Autonomy)* (1978)

V 8 W.M. de Jong, Techniek en wetenschap als basis voor industriële innovatie – Verslag van een reeks van interviews *(Technology and Science as a base for Industrial Innovation)* (1978)

V 9 R. Gerritse, Instituut voor Onderzoek van Overheidsuitgaven: De publieke sector: ontwikkeling en waardevorming – Een vooronderzoek *(The Public Sector: Development and Valuation)* (1979)

V10 Vakgroep Planning en Beleid/Sociologisch Instituut Rijksuniversiteit Utrecht: Konsumptieverandering in maatschappelijk perspectief *(Shifts in Consumption in a Societal Perspective)* (1979)

V11 R. Penninx, Naar een algemeen etnisch minderhedenbeleid? Opgenomen in rapport nr. 17 *(Towards an Overall Ethnic Minorities Policy? Attached to Report nr. 17)* (1979)

V12 De quartaire sector - Maatschappelijke behoeften en werkgelegenheid - Verslag van een werkconferentie *(The Quarternary Sector: Societal Requirements and Employment Opportunities)* (1979)

V13 W. Driehuis en P.J. van den Noord, Produktie, werkgelegenheid en sectorstructuur in Nederland 1960–1985 *(Output, Employment and the Structure of Production in the Netherlands, 1960–1985)* Modelstudie bij het rapport Plaats en toekomst van de Nederlandse industrie (1980)

V14 S.K. Kuipers, J. Muysken, D.J. van den Berg en A.H. van Zon, Sectorstructuur en economische groei: een eenvoudig groeimodel met zes sectoren van de Nederlandse economie in de periode na de tweede wereldoorlog *(The Strucure of Production and Economic Growth: a Simple Six-Sector Growth Model of the Dutch Economy in the Post-War Period)* Modelstudie bij het rapport Plaats en toekomst van de Nederlandse industrie (1980)

V15 F. Muller, P.J.J. Lesuis en N.M. Boxhoorn, Een multisectormodel voor de Nederlandse economie in 23 bedrijfstakken *(A Multi-Sector Model of the Dutch Economy Divided into 23 Branches of Industry).*
F. Muller, Veranderingen in de sectorstructuur van de Nederlandse economie *1950–1990 (Shifts in the Structure of Production in the Dutch Economy 1950–1990).* Modelstudie bij het rapport Plaats en toekomst van de Nederlandse industrie (1980).

V16 A.B.T.M. van Schaik, Arbeidsplaatsen, bezettingsgraad en werkgelegenheid in dertien bedrijfstakken *(Jobs, Capacity, Utilization and Employment Opportunities in Thirteen Branches of Industry)* Modelstudie bij het rapport Plaats en toekomst van de Nederlandse industrie (1980)

V17 A.J. Basoski, A. Budd, A. Kalff, L.B.M. Mennes, F. Racké en J.C. Ramaer, Exportbeleid en sectorstructuurbeleid *(Export Policy and Structural Policies)* Preadviezen bij het rapport Plaats en toekomst van de Nederlandse industrie (1980)

V18 J.J. van Duijn, M.J. Eleman, C.A. de Feyter, C. Inja, H.W. de Jong, M.L. Mogendorff en P. Verloren van Themaat, Sectorstructuurbeleid: mogelijkheden en beperkingen *(Structural Policies: Prospects and Limitations)* Preadviezen bij het rapport Plaats en toekomst van de Nederlandse industrie (1980)

V19 C.P.A. Bartels, Regio's aan het werk: ontwikkelingen in de ruimtelijke spreiding van economische activiteiten in Nederland *(Putting Regions to Work: Trends in the Regional Distribution of Economic Activity in the Netherlands)* Studie bij het rapport Plaats en toekomst van de Nederlandse industrie (1980)

V20 M.Th. Brouwer, W. Driehuis, K.A. Koekoek, J. Kol, L.B.M. Mennes, P.J. van den Noord, D. Sinke, K. Vijlbrief en J.C. van Ours, Raming van de finale bestedingen en enkele andere grootheden in Nederland in 1985 *(Estimate of the Final Expenditure and some other Data in the Netherlands in 1985)* Technische nota's bij het rapport Plaats en toekomst van de Nederlandse industrie (1980)

V21 J.A.H. Bron, Arbeidsaanbod-projecties 1980-2000 *(Projections of the Labour Supply 1980-2000)* (1980)

V22 A. Faludi, R.J. In 't Veld, I.Th.M. Snellen en P. Thoenes, Benaderingen van planning; vier preadviezen over beleidsvorming in het openbaar bestuur *(Approaches to Planning)* (1980)

V23 Beleid en toekomst *(Government Policy and the Future)*, report of a symposium on the report Beleidsgerichte toekomstverkenning deel 1 *(Policy-Oriented Survey of the Future, Part 1)* (1981)

V24 L.J. van den Bosch, G. van Enckevort, Ria Jaarsma, D.B.P. Kallen, P.N. Karstanje, K.B. Koster, Educatie en welzijn *(Education and Welfare)* (1981)

V25 J.C. van Ours, D. Hamersma, G. Hupkes, P.H. Admiraal, Consumptiebeleid voor de werkgelegenheid *(Consumption Policy for Employment)* Background reports to the report Vernieuwingen in het Arbeidsbestel *(Prospects for Reforming the Labour System)* (1982)

V26 J.C. van Ours, C. Molenaar, J.A.M. Heijke, De wisselwerking tussen schaarsteverhoudingen en beloningsstructuur *(The Interaction between Relative Scarcities and the Renummeration Structure)* Background reports to the report Vernieuwingen in het Arbeidsbestel *(Prospects for Reforming the Labour System)* (1982)

V27 A.A. van Duijn, W.H.C. Kerkhoff, L.U. de Sitter, Ch.J. de Wolff, F. Sturmans, Kwaliteit van de arbeid *(The Quality of Work)* Background reports to the report Vernieuwingen in het Arbeidsbestel *(Prospects for Reforming the Labour System)* (1982)

V28 J.G. Lambooy, P.C.M. Huigsloot, R.E. van de Lustgraaf, Greep op de stad? Een institutionele visie op stedelijke ontwikkeling en de beïnvloedbaarheid daarvan *(Getting Cities under Control? An Institutional Approach to Urban Development and its Controllability)* (1982)

V29 J.C. Hess, F. Wielenga, Duitsland in de Nederlandse pers - altijd een probleem? Drie dagbladen over de Bondsrepubliek 1969-1980 *(Germany in the Dutch Press: Always a Problem? Reporting by three newspapers on West Germany, 1969-1980)* (1982)

V30 C.W.A.M. van Paridon, E.K. Greup, A. Ketting: De handelsbetrekkingen tussen Nederland en de Bondsrepubliek Duitsland *(The Trading Relationship between the Netherlands and the Federal Republic of Germany)* (1982)

V31 W.A. Smit, G.W.M. Tiemessen, R. Geerts: Ahaus, Lingen en Kalkar; Duitse nucleaire installaties en de gevolgen voor Nederland *(Ahaus, Lingen and Kalkar: German Nuclear Facilities and their Implications for the Netherlands)* (1983)

V32 J.H. von Eije: Geldstromen en inkomensverdeling in de verzorgingsstaat *(Money Flows and the Distribution of Income in the Welfare State)* (1982)

V33 Report on the Second Term of Office 1978-1982*

V34 P. den Hoed, W.G.M. Salet en H. van der Sluijs: Planning als onderneming *(Planning as a Form of Action)* (1983)

V35 H.F. Munneke e.a.: Organen en rechtspersonen rondom de centrale overheid *(Administrative Bodies on the Periphery of Central Government);* two volumes (1983)

V36 M.C. Brands, H.J.G. Beunders, H.H. Selier: Denkend aan Duitsland; een essay over moderne Duitse geschiedenis en enige hoofdstukken over de Nederlands-Duitse betrekkingen in de jaren zeventig *(Thinking about Germany; An Essay on Modern German History, with some Chapters on Dutch-German Relations in the Seventies)* (1983)

V37 L.G. Gerrichhauzen: Woningcorporaties; Een beleidsanalyse *(Housing Corporations; A Policy Analysis)* (1983)

V38 J. Kassies, Notities over een heroriëntatie van het kunstbeleid *(Notes on a Reorientation of Policy on the Arts)* (1983)

V39 Leo Jansen, Sociocratische tendenties in West-Europa *(Sociocratic trends in Western Europe)* (1983)

Third Term of Office

V40 G.J. van Driel, C. van Ravenzwaaij, J. Spronk en F.R. Veeneklaas: Grenzen en mogelijkheden van het economisch stelsel in Nederland *(Limits and Potential of the Economic System in the Netherlands)* (1983)

V41 Adviesorganen in de politieke besluitvorming *(Advisory Bodies in the Political Decision-Making Process);* Report of a symposium by A.Th. van Delden and J. Kooiman (1983)

V42 E.W. van Luijk, R.J. de Bruijn: Vrijwilligerswerk tussen betaald en onbetaald werk; een verkennende studie op basis van een enquête *(Volunteering between Paid and Unpaid Work; an Exploratory Study Based on a Survey)* (1984)

V43 Planning en beleid *(Planning and Policy);* Report of a Symposium on the Study Planning as a Form of Action (1984)

V44 W.J. van der Weijden, H. van der Wal, H.J. de Graaf, N.A. van Brussel, W.J. ter Keurs: Bouwstenen voor een geïntegreerde landbouw *(Towards an Integrated Agriculture)* (1984)*

V45 J.F. Vos, P. de Koning, S. Blom: Onderwijs op de tweesprong; over de inrichting van basisvorming in de eerste fase van het voortgezet onderwijs *(The Organization of the Core Curriculum in the First Stage of Secondary Education)* (1985)

V46 G. Meester, D. Strijker: Het Europese landbouwbeleid voorbij de scheidslijn van zelfvoorziening *(The European Agricultural Policy Beyond the Point of Self-Sufficiency)* (1985)

V47 J. Pelkmans: De interne EG-markt voor industriële produkten *(The Internal EC-Market for Industrial Products)* (1985)*

V48 J.J. Feenstra, K.J.M. Mortelmans: Gedifferentieerde integratie en Gemeenschapsrecht: institutioneel- en materieelrechtelijke aspecten *(Differentiated Integration and Community Law: Institutional and Substantive Aspects)* (1985)

V49 T.H.A van der Voort, M. Beishuizen: Massamedia en basisvorming *(Mass Media and the Core Curriculum)* (1986)

V50 C.A. Adriaansens, H. Priemus: Marges van volkshuisvestingsbeleid *(Margins of Housing Policy)* (1986)

V51 E.F.L. Smeets, Th.J.N.N. Buis: Leraren over de eerste fase van het voortgezet onderwijs *(Teachers' Opinions on the First Stage of Secondary Education)* (1986)

V52 J. Moonen: Toepassing van computersystemen in het onderwijs *(The Use of Computer Systems in Education)* (1986)

V53 A.L. Heinink, H. Riddersma, J. Braaksma: Basisvorming in het buitenland *(An International Comparison of Core Curricula)* (1986)

V54 Zelfstandige bestuursorganen. *(Qausi-Autonomous Non-Governmental Organisations)* Verslag van de studiedag op 12 november 1985 (1986)

*Also available in English

The Council commissioned a number of experts to carry out preliminary studies for the report 'A Coherent Media Policy'. The following studies were published in a separate series entitled 'Media Policy Background and Preliminary Studies' (in Dutch):

M 1 J.M. de Meij: Overheid en uitingsvrijheid *(The Government and Freedom of Speech)* (1982)

M 2 E.H. Hollander: Kleinschalige massacommunicatie; locale omroepvormen in West-Europa *(Small-scale Mass Communications: Local Broadcasting Forms in Western Europe)* (1982)

M 3 L.J. Heinsman/Nederlandse Omroep Stichting: De kulturele betekenis van de instroom van buitenlandse televisieprogramma's in Nederland – Een literatuurstudie *(The Cultural Significance of the Inflow of Foreign Television Programmes in the Netherlands – A Survey of the Literature)* (1982)

M 4 L.P.H. Schoonderwoerd, W.P. Knulst/Sociaal en Cultureel Planbureau: Mediagebruik bij verruiming van het aanbod *(Media Use and a Wider Media Range)* (1982)

M 5 N. Boerma, J.J. van Cuilenburg, E. Diemer, J.J. Oostenbrink, J. van Putten: De omroep: wet en beleid; een juridisch-politicologische evaluatie van de Omroepwet *(Broadcasting – Legislation and Government Policy: A Legal and Political Evaluation of the Broadcasting Act)* (1982)

M 6 Intomart B.V.: Etherpiraten in Nederland *(Radio Pirates in the Netherlands)* (1982)

M 7 P.J. Kalff/Instituut voor Grafische Techniek TNO: Nieuwe technieken voor productie en distributie van dagbladen en tijdschriften *(New Techniques for the Production and Distribution of Newspapers and Magazines)* (1982)

M 8 J.J. van Cuilenburg, D. McQuail: Media en pluriformiteit; een beoordeling van de stand van zaken *(The Media and Diversity: An Assessment of the State of Affairs)* (1982)

M 9 K.J. Alsem, M.A. Boorman, G.J. van Helden, J.C. Hoekstra, P.S.H. Leeflang, H.H.M. Visser: De aanbodstructuur van de periodiek verschijnende pers in Nederland *(The Supply Structure of Regular Press Publications in the Netherlands)* (1982)

M10 W.P. Knulst/Sociaal en Cultureel Planbureau: Mediabeleid en cultuurbeleid; Een studie over de samenhang tussen de twee beleidsvelden *(Media Policy and Cultural Policy: A Study of the Interrelationship between the two Fields of Policy)* (1982)

M11 A.P. Bolle: Het gebruik van glasvezelkabel in lokale telecommunicatienetten *(The Use of Fibre Optic Cable in Local Telecommunications Networks)* (1982)

M12 P. te Nuyl: Structuur en ontwikkeling van vraag en aanbod op de markt voor televisieprodukties *(The Structure and Development of Demand and Supply in the Market for Television Productions)* (1982)

M13 P.J.M. Wilms/Insituut voor Onderzoek van Overheidsuitgaven: Horen, zien en betalen; een inventariserende studie naar de toekomstige kosten en bekostigingen van de omroep *(Listening, Viewing and Paying: An Inventory Study of the Future Cost and Funding of Broadcasting)* (1982)

M14 W.M. de Jong: Informatietechniek in beweging; consequenties en mogelijkheden voor Nederland *(Information Technology in Flux: Consequences and Possibilities for the Netherlands)* (1982)

M15 J.C. van Ours: Mediaconsumptie; een analyse van het verleden, een verkenning van de toekomst *(Media Consumption: An Analysis of the Past and Survey of the Future)* (1982)

M16 J.G. Stappers, A.D. Reijnders, W.A.J. Möller: De werking van massamedia; een overzicht van inzichten *(The operation of Mass Media: A Survey of the State of Understanding)* (1983)

M17 F.J. Schrijver: De invoering van kabeltelevisie in Nederland *(The Introduction of Cable in the Netherlands)* (1983)

The Council has published the following Reports to the Government

First term of office

1. *Europese Unie* (European Union), 1974.
2. *Structuur van de Nederlandse economie* (Structure of the Netherlands Economy), 1974.
3. *Energiebeleid op langere termijn* (Long-term Energy Policy), 1974. Reports 1 to 3 are published in one volume.
4. *Milieubeleid* (Environment Policy), 1974.
5. *Bevolkingsprognoses* (Population Forecasts), 1974.
6. *De organisatie van het openbaar bestuur* (The Organization of Public Administration), 1975.
7. *Buitenlandse invloeden op Nederland: Internationale migratie* (Foreign Influence on the Netherlands: International Migration), 1976.
8. *Buitenlandse invloeden op Nederland: Beschikbaarheid van wetenschappelijke en technische kennis* (Foreign Influence on the Netherlands: Availability of Scientific and Technical Knowledge), 1976.
9. *Commentaar op de Discussienota Sectorraden Wetenschapsbeleid* (Comments on the Discussion Paper on Sectoral Councils of Science Policy), 1976.
10. *Commentaar op de nota Contouren van een toekomstig onderwijsbestel* (Comments on the White Paper on the Contours of the Future Educational System), 1976.
11. *Overzicht externe adviesorganen van de centrale overheid* (Survey of External Advisory Bodies of the Central Government), 1976.
12. *Externe adviesorganen van de centrale overheid, beschrijving, ontwikkelingen, aanbevelingen* (External Advisory Bodies of the Central Government: Description, Developments, Recommendations), 1977.
13. *'Maken wij er werk van?' Verkenningen omtrent de verhouding tussen actieven en niet-actieven* ('Do we make Work our Business?' An Exploratory Study of the Relations between Economically Active and Inactive Persons), 1977.
14. *Overzicht interne adviesorganen van de centrale overheid* (Survey of Internal Advisory Bodies of the Central Government), 1977.
15. *De komende vijfentwintig jaar, een toekomstverkenning voor Nederland* (The Next Twenty-Five Years: a Survey of Future Developments in the Netherlands), 1977.
16. *Over sociale ongelijkheid, een beleidsgerichte probleemverkenning* (On Social Inequality: a Police-oriented Study), 1977.

Second term of office

17. *Etnische minderheden – A. Rapport aan de Regering; B. Naar een algemeen etnisch minderhedenbeleid?* (Ethnic minorities – A. Report to the Government; B. Towards on Overall Ethnic Minorities Policy?), 1979.
18. *Plaats en toekomst van de Nederlandse industrie* (Industry in the Netherlands: its Place and Future), 1980.
19. *Beleidsgerichte toekomstverkenning: deel 1. Een poging tot uitlokking* (A Policy-oriented Survey of the Future: Part 1. An Attempt to Challenge), 1980.
20. *Democratie en geweld – Probleemanalyse naar aanleiding van de gebeurtenissen in Amsterdam op 30 april 1980* (Democracy and Violence – an Analysis of Problems in Connection with the Events in Amsterdam on April 30, 1980), 1980.
21. *Vernieuwingen in het arbeidsbestel* (Prospects for Reforming the Labour System), 1981.
22. *Herwaardering van welzijnsbeleid* (A Reappraisal of Welfare Policy), 1982.
23. *Onder invloed van Duitsland. Een onderzoek naar gevoeligheid en kwetsbaarheid in de betrekkingen tussen Nederland en de Bondsrepubliek* (The German Factor. A Survey of Sensitivity and Vulnerability in the Relationship between the Netherlands and the Federal Republic), 1982.
24. *Samenhangend mediabeleid* (A Coherent Media Policy), 1982.

Third term of office

25. *Beleidsgerichte toekomstverkenning: deel 2; Een verruiming van perspectief* (A Policy-oriented Survey of the Future: Part 2: Towards a Broader Perspective), 1983.
26. *Waarborgen voor zekerheid; een nieuw stelsel van sociale zekerheid in hoofdlijnen* (Safeguarding Social Security), 1985.
27. *Basisvorming in het onderwijs* (The Core Curriculum in Secondary Education), 1986.
28. *De onvoltooide Europese integratie* (The Unfinished European Integration), 1986.

Reports nos. 13, 15, 17, 18 and 28 have been translated into English; English summaries are available of Reports nos. 16, 18, 19, 20, 25 and 26; Report no 23 has been translated into German.

The Council's publications may be obtained from the Staatsuitgeverij, Christoffel Plantijnstraat 1, P.O. Box 20014, 2500 EA The Hague, The Netherlands, tel. 070-789911, or from booksellers. Publications in English are available at the Council's bureau.