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YEDITEPE UNIVERSITY
GRADUATE INSTITUTE OF SOCIAL SCIENCES

ANALYSING EUROPEAN UNION MARITIME TRANSPORT POLICY

by

Hayreddin Taylan ADALI

Submitted to the Graduate Institute of Social Sciences
In partial fulfillment of the requirements for the degree of
Master of
Business Administration

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TABLE OF CONTENTS

LIST OF ABBREVATIONS

ABS	American Bureau of Shipping
ADR	International Carriage of Dangerous Goods by Road
AETR	European Agreemant Concerning the Work of Crews of Vehicles Engaged in International Road Transport
AFS	Anti-Fouling System Convention
ATR	Air Traffic Management
BV	Bureau Veritas
BLU CODE	Bulk Loading and Unloading Code
CAS	The Condition Assestment Scheme
CCS	China Classification Society
CER	Community of European Railways
CFSP	Common Foreign and Security Policy
CIVITAS	City-Vitality Sustainability
CLC	Convention on Liability of the Carrier
CLC-IOPCF	Civil Liability Convention / Oil Pollution Compensation Fund
COLREG	Collision Regulation
CTP	Common Transport Policy
CAFE	Clean Air for Europe
DNV	Det Norske Veritas
DWT	Deadweight Tonnage
EAGGF	European Agricultural Guidance and Guarantee Fund
EAT	European Atomic Treaty
EC	European Community
ECJ	European Court of Justice
ECSA	European Community Shipowners' Association
ECSC	European Coal and Steel Community
ECT	European Community Treaty
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EFTA	European Free Trade Association

ELAA	European Liner Affairs Association
EMSA	European Maritime Safety Agency
EMU	Economic and Monetary Union
EP	European Parliament
EPC	European Political Cooperation
ERDF	European Regional Development Fund
ESF	European Social Fund
ETF	The European Transport Workers' Federation
EU	European Union
EURATOM	European Atomic Energy Community
FDR	Funding for Development and Refief
FFE	Freight Forward Europe
FMC	Fish Monitoring Centre
FTA	Freight Transport Association
FYROM	The Former Yugoslav Republic of Macedonia
GL	Germanisher Lloyd
GDP	Gross Domestic Product
GNP	Gross National Product
HRS	Hellenic Register of Shipping
HSC	High Speed Craft
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
ICZM	Integrated Coastal Zone Management
IGC	Inter-Governmental Conference
ILO	International Labaour Organisation
IMO	International Maritime Organisation
IOPC	International Fund for Compensation for Oil Pollution Damage
ISM	International Safety Management
ITF	The International Transport Workers' Federation
IUU	Illegal, Unreported and Unregulated
KR	Korean Register of Shipping
LR	Lloyd's Register of Shipping

MARNIS	Maritime Navigation Information Service
MARPOL	Prevention of Pollution by the Ships
MEPC	Maritime Environment Protection Committee
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NATO	North Atlantic Treaty Organisation
NDA	New Defence Agenda
NK	Nippon Kaiji Kyokai
OEEC	Organisation for European Economic Cooperation
OJ	Official Journal
OPA	Oil Pollution Act
OTIF	Organisation for International Carriage by Rail
PJCC	Police and Judicial Cooperation in Criminal Matters
PRS	Polish Register of Shipping
PSC	Port State Control
PSCO	Port State Control Officer
PSO	Public Service Obligation
QMV	Qualified Majority Voting
RIN	Registro International Naval
RINA	Registro Italiano Navale
RS	Russian Maritime Register of Shipping
SBT	Segrated Balast Tanks
SEA	Single European Act
SESAR	Single European Sky Air Transport Management Research
SOLAS	Safety of Life at Sea
SRA	Strategic Rail Authority
STCW	Standart of Training, Certification and Watchkeeping
STCW-F	Standart of Training, Certification and Watchkeeping for Fishing
TBT	Tributyltin
TEN_S	Trans European Networks
TEN-T	Trans European Network Transport

TEU	Treaty of European Union
TPT	Triphenyltin
UIC	International Union of Railways
UNCTAD	The United Nations Conference on Trade and Development
VDR	Voyage Data Recorder
VMS	Vessel Monitoring System
VOC	Volotile Organic Compound
WTO	World Trade Organisation

LIST OF FIGURES

LIST OF TABLES

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ABSTRACT

European Union feels the social, economical, political and geo-strategic effects in its nature strongly because of its geographical habit, which looks like a semi-island that is surrounded by water.

European Union continuous its structural development in maritime transportation and trading rapidly by taking the changing and improving economical and social conditions into the account. On the other hand, the new regulations with high technology have been required in maritime security and safety as a result of today's global threatening.

The countries in European Union and European Union Commission concern about being dependent on third parties in transporting European Union's foreign trading goods unless the states support their own transporting firms. Therefore, the states' aids to maritime sector have been admitted by European Union officially.

The maritime transportation holds more than 90% of the foreign trading transaction and about 43% of domestic trading transaction in European Union. Therefore, the maritime transportation plays an important role in European Union economy so that its continuity and safety really vital for European Union (EU). EU has been trying to create a common platform to inspect all ships that are traveling at inland water due the regulations of International Maritime Organization (IMO). Erica-I and Erica-II are two of the major proposals that the commission has been released on maritime transportation safety so far. The union has been spending effort to strengthen its position in international platforms for the benefit of Europe by reconstructing the regulations on maritime and its maritime policy due to the conventional of IMO.

Using the general analyses mentioned above about European Union, my thesis targets to inform people not only about maritime policy of European Union and its revolution over the time, but also about the maritime transportation in European Union and its evolutional development and regulations that have been influencing other countries in Europen Union historically. I strongly believe that my academic thesis work will be a key resource to lighten those who want to comprehend the policy of maritime transportation in European Union from both technical and political perspectives.

ÖZET

Avrupa Birliği, üç tarafı denizler ile kuşatılmış, bir yarımadayı andıran coğrafi yapısıyla, bunun sosyal, ekonomik , siyasi ve jeo-stratejik etkilerini bünyesinde oldukça güçlü bir şekilde barındırmaktadır.

Topluluk, deniz taşımacılığının ve deniz ticaretinin önemine paralel olarak bu alandaki yapısal çalışmalarına değişen ve gelişen ekonomik ve sosyal koşullarıda göz önüne alarak hızla devam etmektedir. Elbette küresel anlamda farklı tehdit algılamalarının ortaya çıkması ile birlikte, deniz emniyeti ve deniz güvenliği konularında da, gelişen teknolojiler yardımı ile yeni düzenlemeler yapılmaktadır.

Avrupa Birliği komisyonu ve Topluluğa üye Devletler, Devlet yardımı yapılmaz ise topluluk filosonun çok azalacağına ve bundan dolayı AB'nin dış ticaret yüklerini taşıma hususunda başka filolara bağımlı olacağını düşünmektedirler. Bu sebeple denizcilik sektörüne yapılan Devlet yardımları, komisyon tarafından resmen kabul edilmetedir.

Deniz taşımacılığına bağımlı olan AB'nin, dış ticaretinin % 90' ından fazlası ve iç ticaretinin % 43'ü deniz yolu ile gerçekleştirilmektedir. Bu anlamda, deniz taşımacılığının güvenliği ayrı bir önem taşımaktadır. Avrupa Birliği, iç sularında dolaşan bütün gemilerin kontrolünün sağlanması ve Uluslararası Denizcilik Örgütü'nün (IMO) kurallarının pratikte hayata geçirilmesi için ortak yaklaşımlar üretmektedir. Komisyon'un 2000 yılında hazırladığı Erica I ve Erica II isimli yönergeleri, deniz taşımacılığı güvenliği ile ilgili aldığı önlemlerden birkaçını oluşturmaktadır. Topluluk, Deniz emniyeti konusunda, denizcilik politikasını IMO konvansiyonlarına ve kurallarına dayandırmakla beraber, Avrupa'nın çıkarlarını gözetmek için Uluslararası kuruluşlardaki konumunu güçlendirmeyi planlamaktadır.

Bu değerlendirmelerden yola çıkılarak yapılan araştırmadaki amaç, Avrupa Birliği'nin denizcilik politikası alanındaki uygulamaları, almış olduğu Topluluğu bağlayıcı kararları ve bunların gelişen koşullar karşısında revize edilmiş değişiklikleri hakkında insanları bilgilendirmek, deniz taşımacılığındaki evriminin tarihsel gelişimi hakkında detaylı olarak fikir vermek, deniz taşımacılığı alanındaki politikalarının genel özelliklerini ve gelişimini etkileyen faktörleri tanıtmaktır. Yapmış olduğum akademik tez çalışmam, hem teknik hemde siyasi kullanıma yönelik bilgiler ışığında, Avrupa Birliği'nin deniz taşımacılığı alanındaki politikalarını anlamak hususunda önemli bir anahtar doküman olacaktır.

1. INTRODUCTION

Europeans will never forget the taste of learning about the great voyages of discovery, which opened the eyes of their forebears to the vastness of the planet, to the diversity of its cultures and richness of its resources. Most of these voyages were made by sea. Most of them required for their success openness to new ideas, meticulous planning, courage and determination. As time passed by, they not only opened up previously uncharted areas of the globe, they also generated new technologies such as the chronometer to allow for the exact calculation of longitude and the steam turbine to bring independence from the tyranny of prevailing winds. Many Europeans have always lived beside or close to the sea. It has provided them with a living as fishers and mariners, it has given them health and enjoyment, new horizons to dream of and a rich vocabulary of words and metaphors to be used in literature and their daily lives. It has been seen as a source of romance, but also of separation, unknown perils and grief. It has provided to them with a constant challenge and a deep yearning to understand it better.

The Europe is surrounded by many islands and by four seas: the Mediterranean, the Baltic, the North Sea and the Black Sea; and by two oceans: the Atlantic and the Arctic. This Continent is a peninsula with thousands of kilometers of coast - longer than that of other large landmasses such as the United States or the Russian Federation. This geographical reality means that over two thirds of the Union's borders are coastal and that the maritime spaces under the jurisdiction of its Member States are larger than their terrestrial territory. Through its outermost regions, in addition to the Atlantic Ocean, Europe is also present in the Indian Ocean and the Caribbean Sea. Their maritime stakes are many and concern the EU as a whole. Europe's geography, therefore, has always been one of the primary reasons for Europe's special relationship with the oceans. From the earliest times, the oceans have played a leading role in the development of European culture, identity and history.

Taking its geography into the account, its history and globalization the European Union is absolutely dependent Maritime Transport. As the EU seeks to revitalise its economy, it is important to recognise the economic potential of her maritime dimension. Between 3 and 5% of Europe's Gross Domestic Product (GDP) is estimated to be generated by marine based industries and services, without including the value of raw materials, such as oil, gas or fish.The maritime regions account for over 40% of GDP. Nearly 90 % of its external trade and more than 40 % internal trade goes by sea; on the whole,nearly 2 billion tons of

freight are loaded and unloaded EU ports each year; Maritime Companies belonging to European Union national control nearly 40% of the world fleet; the majority of EU trade is carried on vessels controlled by EU interests.Despite this, European citizens are not always well-informed of the importance of the oceans and seas in their lives. They know how crucial water is, but may not make thelink with most of its being recycled from the oceans as rain or snow. They worry about climate change, but may not always see the key role of the oceans in modulating it. They benefit from their ability to buy cheap products from around the world, without realising how complex web of logistics is which brings them to us.

The main point of the EU agenda is "sustainable development". Its challenge is to ensure mutual reinforcement of economic growth, social welfare and environmental protection. The EU now has the opportunity to apply sustainable development to the oceans. To do this, it can build on the strengths which have always underpinned its maritime leadership: knowledge of the oceans, extensive experience and an ability to seize new challenges, and combine these with its strong commitment to the protection of the resource base.

Oceans and seas cannot be managed without cooperation with third countries and in multilateral forum. EU policy aimed at the oceans must be developed within that international context.

The Europe to rise to the struggle of finding a better relationship with the oceans it is not only industry, which will need to innovate. So too will policy-makers. They should consider a new approach to oceans and seas management that no longer looks only at what humans can extract from the oceans and seas, nor one that looks at the oceans and seas on a purely sectoral basis, but one that looks at them as a whole. So far EU's policies on maritime transport, shipbuilding's, ports, related industries, coastal regions, fisheries, the marine environment and other relevant areas have been developed separately. Of course policy makers have tried to ensure that their impact on each other was taken into account. But no one was looking at the broader links between them. No one was examining in a systematic manner how these policies could be combined to reinforce each other.

Fragmentation can result in the adoption of conflicting measures, which in turn have negative consequences on the marine environment or may impose disproportionate constraints on competing maritime activities. Moreover, fragmentation of decision-making makes it difficult to comprehend the potential impact of one set of activities upon another.

It prevents European's from exploring untapped synergies between different maritime sectors.

It is a perfect time and situation to bring all these elements together and forge a new vision for the management of EU's relations with the oceans. This will require new ways of designing and implementing policies at the EU, national and local levels, as well as at international level through the external dimension of EU's internal policies.

2. EUROPEAN UNION

2.1 OVERVIEW

The European Union (EU) is a supranational and intergovernmental union of 27 states in Europe. It was established in 1992 by the Treaty on European Union (The Maastricht Treaty), and is the de facto successor to the six-member European Economic Community founded in 1957. Since then new accessions have raised its number of member states, and competences have expanded. The EU is the current stage of a continuing open-ended process of European integration. Critics are concerned that process will ultimately deprive member states of their sovereignty.

The EU is now the largest political and economic entity in the World, with around 493 million people and a nominal GDP of €10.5 ($13.7) trillion.[1] The Union is a single market with a common trade policy.[2] It has its own currency, the euro - already adopted by 13 member states. The Union has a Common Agricultural Policy, a Common Fisheries Policy, and a Regional policy to assist poorer regions. It has initiated a limited Common Foreign and Security Policy, and a limited joint policy on crime.

Important EU institutions and bodies include the European Commission, the Council of the European Union, the European Council, the European Central Bank, the European Court of Justice, and the European Parliament. Citizens of EU member states are also EU citizens: they directly elect the European Parliament, once every five years. They can live, travel, work, and invest in other member states (with some restrictions on new member states). Passport control and customs checks at most internal borders were abolished by the Schengen Agreement.[3]

The common property of these unions is to gather the member countries under the roof of common benefits and protect those benefits. Economic, social and political structure of the countries forming alliences are generally the similar. By the help of these similarities, the aims of firms, the policies they follow toward these aims and the decisions they make are also common. Although European Union (EU) is at the first sight concidered to be a community that formed by geographically close countries, its actual purpose is to increase

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[1] Definitive 2004 figure, Eurostat News Release 23/2007, 19 February 2007

[2] EU and US Perspectives on China's Compliance with Transparency, SSRN, by Paolo Farah, Accessed January 25, 2007

[3] http://ec.europa.eu/justice_home/fsj/freetravel/frontiers/fsj_freetravel_schengen_en.htm

economic and social welfare rather than geographical integration. This chapter is intented to make an introduction to the evolution of European Union by mentioning the following phases:

- Stages that trigers the idea of the European Union
- Development process of the European Union
- Structural process of the European Union

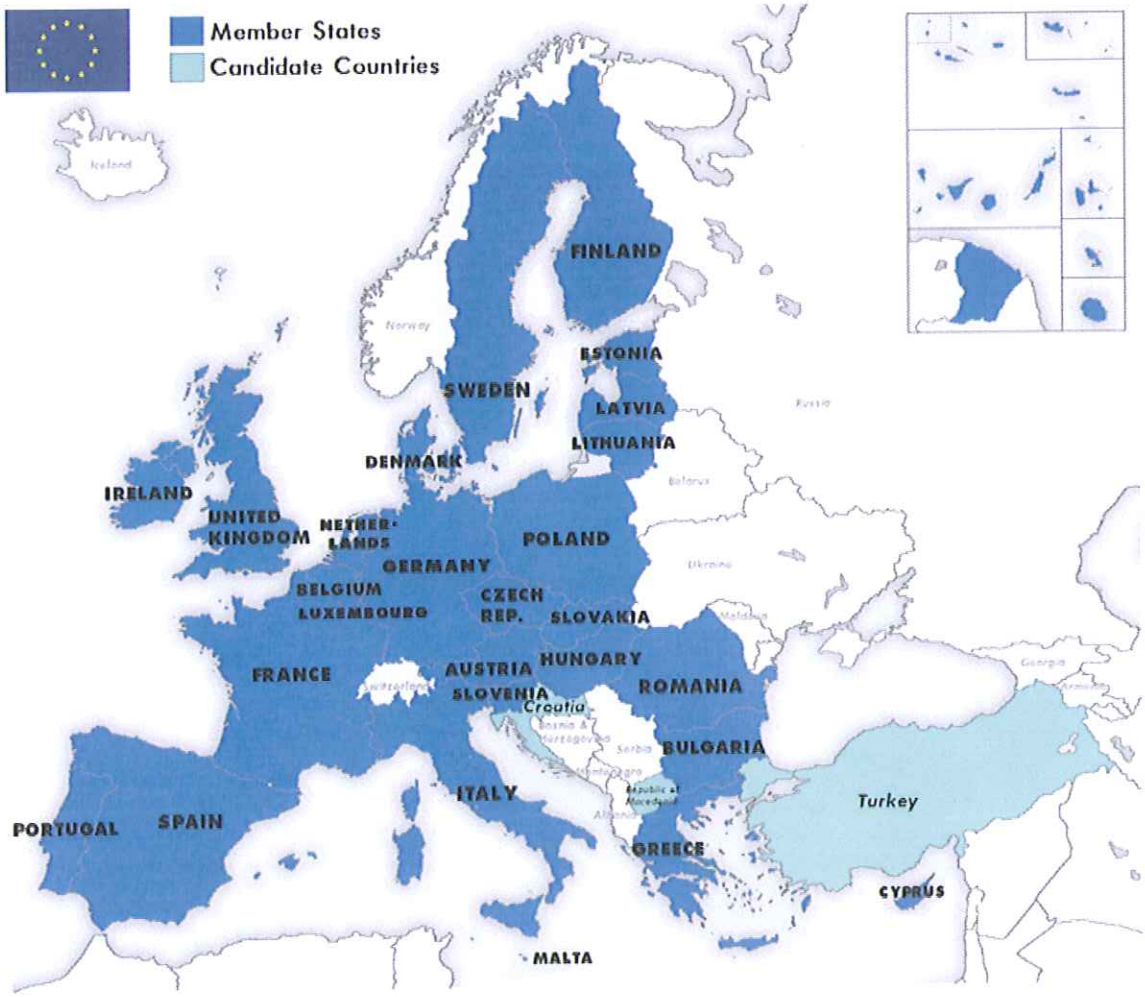

Figure 2.1 Map of the Member States of the European Union

2.2 EARLY EUROPEAN COMMUNITIES

The evolution of the European Community (EC), as the various European collectives dominated by the European Economic Community (EEC) later came to be known,

provided an important framework to ensure the Funding for Development and Relief's (FDR) commitment to West European, and not simply to German, prosperity and peace.Many different elements, political and economic,contributed to the creation of the EEC, its context set by international and domestic trends, by the prevailing balance of power and by economic and technical stability or change. So, too, did many personalities. The measure taken by, first, national politicians and later officials of the EEC acting in concert with national representatives often simply reshaped economic and social developments in western Europe which were sometimes independent of the EEC, but which nevertheless served to strengthen the power of the Community.[4]

The idea of the European Union had emerged long before 1945, long, indeed, before 1789, but it was only after the First World War—which had exposed the reality of European relations as one of bitter,bloody conflict—that a pan-European campaign began in earnest. The central European intellectual, the Hungarian Count Coundenhove-Kalergi, and the French Foreign Minister, Aristide Briand, were among the pioneers. During the Second World War Hitler sought to create some form of European Union under German control, while the common experiences of resistance movements seeking to destroy him contributed in turn to a sense of common European identity across national frontiers.[5]

The postwar debate over European integration was opened by Winston Churchill when, in a speech in Zurich in 1946, he proposed that a Council of Europe be established. It seemed as much a clarion call as his Fulton speech denouncing the 'iron curtain', and in a climate of rising tensions between the superpowers, his proposal was seized upon by aspirants hoping to create a 'third force'- a United Europe- to match the United States and the USSR. Churchill subsequently launched the 'United Europe Movement', while France established the 'Council for United Europe'. The shared sense of a 'European Movement' gathered momentum when the increasingly fashionable conviction spread that integration was a means to prosperity and security and an andidote to the demon of nationalism. Moreover, this approach attracted the warm support of the United States.[6]

By the 1950s the 'European' debate was altered with the acceleration of the Cold War and the arrival of Marshall aid in Europe. The notion of Britain championing a European 'third force' now seemed hopelessly unrealistic in the face of Britain's near bankruptcy and the

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[4] Modern Europe 1789-1989, Asa Briggs & Patricia Clavin,1997.,p.427.
[5] Tony Judt, 2006, "Postwar: A History of Europe since 1945", Penguin, p.88
[6] Tony Judt, 2006, "Postwar: A History of Europe since 1945", Penguin, p.176

emergent divisions over the form a united Europe should take. It was now abundantly clear that the countries of Eastern Europe, which had not been permitted to accept Marshall aid, would be unable to join such a union and that the institutions of a 'western' European Community would advance the 'segregation' of Europe. At the time of the first Council of Europe, established in 1949 to explore the possibilities of European Integration, only a minority of western European powers favoured a continental federation with a common parliament, cabinet and economic policy. Majority support rested with the notion of 'functional cooperation'.

For nations as diverse as Britain, Greece and Finland, the answers to European Union in 1951 was already a resounding 'no'. The British Labour Government soon lost interest in Europe in the face of the Christian-Democrat dominance in Western European politics, Britain's imperial tiesand the country's persistent economic problems which many feared would be exacerbated by a common market. Foreign Minister Ernest Bevin opted instead to cultivate a 'special relationship' with the United States. And when the European debate shifted from political plans for a Western European Union, towards suggestions for European Economic Cooperation, Britain helt stood out.By contrast, the success of the OEEC, the European payments Union (1950) to facilitate the transferability of currencies, and the creation of the Benelux Economic Union (Belgium, the Netherland and Luxembourg), which aimed to free control on 90 per cent of trade between the three countries,all pointed the way to the future . Italy, France and Benelux states, in sharp contrast to Britain and Denmark, sustained their enthusiasm for European cooperation as the old slogan of 'divide and conquer' gave way to 'unify and federate'.[7]

France's commitment was especially important. In contrast to its interwar policy towards Germany, France was now determined that the Federal Republic should be integrated into Western Europe. The French Government's initiative was greatly assisted by Adenauers's staunch pro-West policies and by the warm support of the United States, anxious to create a strong and united western Europe, able to defend itself and avoid the misfortunes which engulfed Europe in the interwar years. It was the Frenchman, Jean Monnet, who focused the vision.Enlisting the support of the then French Foreign Minister, Robert Schuman, he proposed what to him was a first step, a European Coal and Stell Community (ESCC) dealing with commodities crucial for western European recovery and located in Europe's

[7] Modern Europe 1789-1989, Asa Briggs & Patricia Clavin,1997.,p.429

industrial heartland – the French province of Lorraine and the German Ruhr valley. The Schuman plan, as Monnet's scheme came to be known,offered an enticing mix of potential economic benefits, with the ultimate ideal of European integration founded on Franco-German cooperation.

The ESCC, formally created in Paris in 1951, was supported by the six European powers most committed to greater European cooperation : the Benelx countries, France, Germany, and Italy. (Britain, Europe's most powerful nation, first rejected membership, then became an associate member in 1954.) The ESCC was an important innovation in the stimulation of coal and steel production – steel output increased by 50 per cent and industrial production expanded at twice the British rate during the ECSC's first five years. It was also a landmark in western European history, for the ESCS established the principle of supranational cooperation under which participating states had to cede authority to a European agency,restricted though it was the production and sale of iron, coal and steel. A court to title disputes among member was also set up along with an assembly which convened in the first European Council's Chamber in Strasbourg.[8]

From 1958 to 1968 the economic resurgence of western Europe was particularly impressive with in the European Community, and this success helped persuade countries of the Community'spotential benefits. Britain had opted for looser co-operation afforded by the European Free Trade Association (EFTA), created in 1960 with Britain, Denmark, Norway, Sweden, Switzerland, Austria, Portugal, and later Finland and Iceland, as members. By 1960 western Europe's economy was booming. In that year alone it accounted for 58 per cent of world trade and for over two-thirds of the global's Gross National Product (GNP). Moreover, western Europe had also become the focus of the global security system (NATO), which grew to embrace Greece, Turkey (in 1952) and West Germany (in 1955), and which encouraged scientific coopeartion, built underground pipelines to supply fuel in case of war and sought 'more and more to harmonize' the political views of the members 'to create a sense of community.' [9]

2.3 THE HISTORICAL EVALUATION OF THE EUROPEAN UNION

For centuries, Europe was the scene of frequent and bloody wars. In the period 1870 to 1945, France and Germany fought each other three times, with terrible loss of life. A

[8]Modern Europe 1789-1989, Asa Briggs & Patricia Clavin,1997.,p.429

[9] E. Shuckburg, Aspects of NATO: Political Consultation (Paris, May 1960), p.1.

number of European leaders became convinced that the only way to secure a lasting peace between their countries was to unite them economically and politically.[10]

So, in 1950, in a speech inspired by Jean Monnet, the French Foreign Minister Robert Schuman proposed integrating the coal and steel industries of Western Europe. A a result, in 1951, the European Coal and Steel Community (ECSC) was set up, with six members: Belgium, West Germany, Luxembourg, France, Italy and the Netherlands. The power to take decisions about the coal and steel industry in these countries was placed in the hands of an independent, supranational body called the "High Authority". Jean Monnet was its first President.

The ECSC was such a success that, within a few years, these same six countries decided to go further and integrate other sectors of their economies. In 1957 they signed the Treaties of Rome, creating the European Atomic Energy Community (EURATOM) and the European Economic Community (EEC). The member states set about removing trade barriers between them and forming a "common market".[11]

In 1967 the institutions of the three European communities were merged. From this point on, there was a single Commission and a single Council of Ministers as well as the European Parliament.[12]

Originally, the members of the European Parliament were chosen by the national parliaments but in 1979 the first direct elections were held, allowing the citizens of the member states to vote for the candidate of their choice. Since then, direct elections have been held every five years.

The Treaty of Maastricht (1992) introduced new forms of co-operation between the member state governments - for example on defence, and in the area of "justice and home affairs". By adding this inter-governmental co-operation to the existing "Community" system, the Maastricht Treaty created the European Union (EU).

2.3.1 The Ventotene Manifesto

Leading the way was a small group of left-wing intellectuals from the Italian Resistance Movement who illegally launched their drşve for a federated Europe from a political interment center on the island of Ventotene.

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[10] Tony Judt, 2006, "Postwar: A History of Europe since 1945", Penguin, p.42
[11] Tony Judt, 2006, "Postwar: A History of Europe since 1945", Penguin, p.107
[12] Desmond Dinan, 2006, "Origins and Evalution of the European Union", Oxford University Press, p.34

Altiero Spinelli(1907-1986), a former communist and future academic and politician,and Ernesto Rossi(1897-1967), an anti-fascist journalist,in conclusion with several other prisoner,drafted what came to be known as the Ventotene Manifesto in june 1941.[13]

The Manifesto is ultimately a call to action.It begins with a critique of totalitarianism and its causes,then proceeds to call for a movement of workers and intellectuals to seize the opportunity of fered by the war to create a "European Federation" equipped to provide security and social justice for all Europeans.

Figure 2.2 Altiero Spinelli

2.3.2 The Tragedy of Europe

Calls for a United Europe--like that of the Ventotene Manifesto—drew the attention of a wide range of political leaders and activists. Many were young idealist or politicians with limited influence; no leaders of undeniable political stature raised a strong voice in a favor of a federated Europe—that is, until Winston Churchill (1874-1965) spoke from a platform in Zurich.

Churchill's speech at Zurich University on 19 September 1946 profoundly influenced the shape of postwar Europe.He began this speech with the refrain common to all the postwar integrationist: Europe must unite before war destroys the continent,its glorious civilization, and perhaps much of the rest of the world.He called specifically for a "United States of Europe" led by Europe former antagonist,France and Germany, but he did not outline a detailed program for achieving unity.[14]

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[13] Walter Lipgens, Documents on the History of European Integration,Vol.1: Continental plans for EU, 1939-1945, ed. Walter Lipgens (Berlin:Walter de Gruyter,1985), pp. 471-473.

[14] Brent F Nelsen and Alexander Stubb.,2003,"The EU:Readings on the Theory and Practice of European Integration (3rd edn) ", p.7.

Figure 2.3 Winston Churchill

2.3.3 The Shuman Declaration

Efforts in the 1940s to realize Churchill's vision of a united Europe led to increased economic and political cooperation but did not yield anything like a United States of Europe.On 9 May 1950, Robert Schuman (1886-1963), France's foreign minister, outlined a plan to unite under a single authority the coal and steel industries of Europe's biterest enemies,France and Germany. Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity. The coming together of the nations of Europe requires the elimination of the age-old opposition of France and Germany. Any action taken must in the first place concern these two countries. With this aim in view, the French Government proposes that action be taken immediately on one limited but decisive point.

The purpose of the plan, which was developed by Jean Monnet, was to begin building a peaceful,United Europe one step at a time. Europeans goverments would start with two industries essential to the making of war,coal and steel,then add other economic and political sectors until all major decisions were taken at a European level. This would create, in Schuman's words,a "de facto solidarity" that would ultimately make war between France and Germany " metarially impossible." The practical approach of Schuman and Monnet won favır on the European continent ; France,Germany,Italy,and Benelux countries eventually responded by creating the European Coal and Steel Community in 1952.[15]

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[15] Brent F Nelsen and Alexander Stubb.,2003,"The EU:Readings on the Theory and Practice of European Integration (3rd edn) ", p.13.

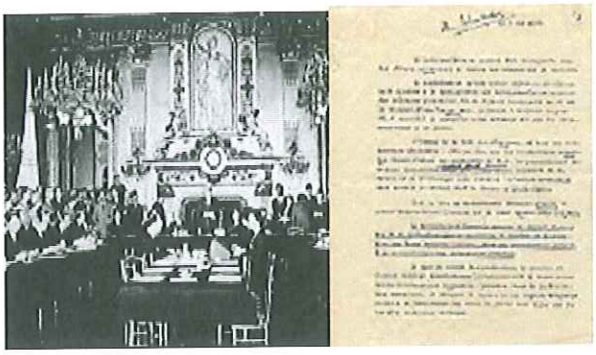

Figure 2.4 Shuman plan

2.3.4 A Ferment of Change

Jean Monnet (1888-1979) was the "father of Europe."No single individual influenced the shape of the European Union more than this French civil servant and diplomat.Monnet convinced Robert Schuman to propose the European Coal and Steal Communuty and became the firt president of its High Authority.Monnet convinced Johan Willem Beyen and Paul-Henri Spaak to propose EURATOM and the EEC, and then established the influential Action Committee for a United States of Europe to pressure goverments to accept the proposals.Monnet work hard, and eventually succesfully, to enlarge the community by adding Britain, Ireland, and Denmark.And shortly before his death, Monnet persuaded EC governments to turn their regular summits into the European Council.[16]

Monnet was a pragmatic government official who quite naturally developed a strategy for uniting Europe that lookedmuch like the step-by-step functionailsm of David Mitrany. Monnet argued that problems of insecurity and human need in the world—and in Europe in particular—required radical changes in the way people thought. Nations, he believed, should adopt common rules governing their behavior and create common institutions to apply these rules.Such a strategy, even if applied on a small scale, would create a "silent revelotion in men's mind" that would change the way people thought and acted. For Monnet, the European Communities of the early 1960s demonstrated that small collective steps set off "a chain reaction, a ferment where one change induces another." This ferment,he asserted, would not lead to another nineteeth-century-style great popwer—althogh a united Europe would be able to shoulder an equal burden of leadership with the United States—nor would be confined to Europe.Integration was a process that may have

[16] Richard Mayne, "Gray Eminence," in Jean Monnet: The Path to European Unity, ed. Douglas B. And Clifford H. (New York: St. Martin's Press, 1991), 114-116.

started in Europe but would soon have to include the broader West, then the rest of the World, if humanity was to "escape destruction."[17]

Figure 2.5 Jean Monnet

2.3.5 A Concert of European States

Charles De Gaulle (1890-1970), French Resistance leader and first president of France's fifth republic, was above all a French nationalist.His overriding objective after the humiliation of World War II was to reestablish France as a great power, free from domination by the superpowers and once again the source of western civilization's cultural and spiritual strenght.De Gaulle's vision of france profoundly shaped his vision of Europe, and differed markedly from the views held by the founders of the European Communities, most noticeably Jean Monnet.

De Gaulle believed in "European Unity", but he criticized the supranational vision of Europeas unrealistic and undesirable.He argued instead for a "Concert of European States" where national governments coordinated their policies extensively but did not give up their right as sovereign entities to a European "superstate." De Gaulle's unwillingness to concede France's right to control its vital affairs led to the 1965 crisis in the communities and eventually the Luxembourg Compromise, which in practice gave every member state the right to veto Community decisions (although it has official been invoked only a handful of times).In effect, the six were forced to accept De Gaulle's vision of an intergovernmental Europe.[18]

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[17] Brent F. Nelsen and Alexsander Stubb,.2003,"The EU : Reading on the Theory and Practice of European Integration",(3rd edn), p.20.

[18] Brent F. Nelsen and Alexsander Stubb,.2003, "The EU : Reading on the Theory and Practice of European Integration", (3rd edn), p.27-28.

Figure 2.6 Charles De Gaulle

2.4 AFTER COLD WAR-THE GROWING UNION

The EU has grown in size with successive waves of accessions. Denmark, Ireland and the United Kingdom joined in 1973 followed by Greece in 1981, Spain and Portugal in 1986 and Austria, Finland and Sweden in 1995. The European Union welcomed ten new countries in 2004: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Bulgaria and Romania expect to follow in 2007; Croatia and Turkey are beginning membership negotiations in 2005.To ensure that the enlarged EU can continue functioning efficiently, it needs a more streamlined system for taking decisions. That is why the Treaty of Nice lays down new rules governing the size of the EU institutions and the way they work. It came into force on 1 February 2003. It will be replaced, in 2006, by the new EU Constitution - if all EU countries approve this.[19]

The European Union ten new Member states welcomed on 1 May, 2004.This new wave of enlargement was one of the most important developments for the European Union in the 21st century. It helped complete the historic task of furthering the integration of the continent by peaceful means, extending a zone of stability and prosperity to new members. Accession negotiations with Bulgaria and Romania have now been completed, and they will join the EU on 1 January, 2007. Turkey and Croatia are also candidate countries and accession negotiations began on 3 October, 2005. The Former Yugoslav Republic of Macedonia (FYROM) was granted candidate status in December 2005.

[19] Desmond Dinan, 2006, "Origins and Evalution of the European Union", Oxford University Press, p.205.

	Czech Republic	Joined the EU on 1 May, 2004 Enlargement at a Glance
	Estonia	
	Cyprus	
	Latvia	
	Lithuania	
	Hungary	
	Malta	
	Poland	
	Slovenia	
	Slovak Republic	
	Bulgaria	Joined as of 1 January, 2007
	Romania	
	Croatia	Accession negotiations began on 3 Oct. 2005
	Turkey	Accession negotiations began on 3 Oct. 2005
	FYR Macedonia	Granted Candidate Country Status in Dec. 2005

Figure 2.7 Enlargement at a Glance[20]

The background to this latest wave of enlargement began in March 1998 when the EU formally launched accession negotiations with six applicant countries - the Czech Republic, Estonia, Cyprus, Hungary, Poland and Slovenia. On 13 October 1999, the Commission recommended Member States to open negotiations with Romania, the Slovak Republic, Latvia, Lithuania, Bulgaria and Malta. This was endorsed by Member States at the Helsinki European Council on 12 December 1999. Turkey was also recognised as an official candidate country at the same Summit Meeting. On 26 September, 2006, the European Commission confirmed Bulgaria and Romania's EU accession on 1 January, 2007, along with a rigorous package of accompanying measures.

Criteria for membership was set down at the Copenhagen European Council in 1993. The criteria are often referred to as the Copenhagen Criteria.

As stated in Copenhagen, membership requires that the candidate country has achieved:

- stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;

[20] Wood, Steve., "The New European Union : Confronting The Challenges of Integration", Studies on the European Polity, Oct. 2007, p. 39.

- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union;
- the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

And in addition to this they has created:

- the conditions for its integration through the adjustment of its administrative structures, so that European Community legislation transposed into national legislation is implemented effectively through appropriate administrative and judicial structures.

2.4.1 Banning the Barriers

Economic and political integration between the member states of the European Union means that these countries have to take joint decisions on many matters. So they have developed common policies in a very wide range of fields - from agriculture to culture, from consumer affairs to competition, from the environment and energy to transport and trade.

In the early days the focus was on a common commercial policy for coal and steel and a common agricultural policy. Other policies were added as time went by, and as the need arose. Some key policy aims have changed in the light of changing circumstances. For example, the aim of the agricultural policy is no longer to produce as much food as cheaply as possible but to support farming methods that produce healthy, high-quality food and protect the environment. The need for environmental protection is now taken into account across the whole range of EU policies.

The European Union's relations with the rest of the world have also become important. The EU negotiates major trade and aid agreements with other countries and is developing a Common Foreign and Security Policy.

It took some time for the Member States to remove all the barriers to trade between them and to turn their "common market" into a genuine single market in which goods, services, people and capital could move around freely. The Single Market was formally completed at the end of 1992, though there is still work to be done in some areas - for example, to create a genuinely single market in financial services.[21]

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[21] Pinder J., 1995, "The European Community : The Building of a Union(2nd edn)", p.93.

During the 1990s it became increasingly easy for people to move around in Europe, as passport and customs checks were abolished at most of the EU's internal borders. One consequence is greater mobility for EU citizens. Since 1987, for example, more than a million young Europeans have taken study courses abroad, with support from the EU.[22]

In 1992 the EU decided to go for economic and monetary union (EMU), involving the introduction of a single European currency managed by a European Central Bank. The single currency - the euro - became a reality on 1 January 2002, when euro notes and coins replaced national currencies in twelve of the 15 countries of the European Union (Belgium, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland).

Year		No.
1957	Belgium, France, West Germany, Italy, Luxembourg, Netherlands	6
1973	Denmark, Ireland, United Kingdom	9
1981	Greece	10
1986	Portugal, Spain	12
1995	Austria, Finland, Sweden	15
2004	Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia	25
2007	Bulgaria, Romania	27

Figure 2.8 History of European Union Membership[23]

2.5 TREATIES AND LAW

The European Union is based on the rule of law. This means that everything that it does is derived from treaties, which are agreed on voluntarily and democratically by all Member States. Previously signed treaties have been changed and updated to keep up with developments in society. The most recent one, the draft Treaty establishing a Constitution for Europe, aims to replace all the existing Treaties with a single text and is the result of the work done by the Convention on the Future of Europe and an Intergovernmental

[22] Desmond Dinan, 2004, "EUROPE RECAST: A History of European Union",Lynne Reinner Publishers, p.142

[23] Wood, Steve., "The New European Union : Confronting The Challenges of Integration", Studies on the European Polity, Oct. 2007, p. 44.

Conference (IGC). The Constitution was adopted by the Heads of State and Government at the Brussels European Council on 17 and 18 June 2004 and was signed in Rome on 29 October 2004. It needs to be ratified by each Member State, in line with their own constitutional arrangements (i.e. by parliamentary procedure and/or by referendum). The Constitution will not take effect until it has been ratified by all 25 Member States.

The ground rules of the European Union are set out in the series of treaties :

- The treaty of Paris,which set up the European Coal and Steal Community(ECSC) in 1951;
- The Treaties of Rome, which set up the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM) in 1957.

These founding treaties were subsequently amended by:

- The Single European Act (1986) ;
- The Treaty on European Union (Maastricht, 1992);
- The Treaty of Amsterdam (1997); and
- The Treaty of Nice (2001).

These treaties have forged very strong legal ties between the EU's member states. European Union laws directly affect EU citizens and give them very specific rights.[24]

2.5.1 Treaty Establishing the European Coal and Steel Community " Treaty of Paris "

The treaty of the European Coal and Steel Community (ECSC), Treaty of Paris, was signed on 18 April 1951 by France, Germany, Italy and the three Benelux countries and came into force on 25 July 1952. For the first time, a group of states agreed to work towards integration. The treaty made it possible to lay the foundations of the community by set up a High Authority, made up of nine independent appointes of the six Member State governments, to be main executive instutions with desicion making power and responsibility for implementing the aims of the Treaty; Parliamentary Assembly made up national Parliements' delegates with mainly supervisory powers; a Council of Ministers, made up of one represantative of age of national governments, with both consultative role and some desicion-making powers, and the task of harmonizing the activities of the States

[24] http://europa.eu.int/scadplus/treaties/ecsc_en.htm

and the High Authority; and Court of Justice of nine judges, to interpret and apply the Treaty provisions; and finally Consultative Committee.[25]

The choice of coal and steel as the starting point of European integration was no accident. These were the war-making industries. The participants placed them under common control partly as a means of ensuring that no state possessed the capacity independently to prepare for war. The "German problem" loomed large for all involved in the process. All Europe would benefit from the economic regeneration of Germany, the heart of the Continent. The task was to promote this restructing within the securityof a wider European framework. From its very inception the movement for European integration was inspired by much more than purely economic objectives. The political restricting of the Continent and the basic desire to avoid further conflict were high on the agenda.

The ECSC was a significant development, as much because of what it's symbolized as because of its actual achievements in the organization of the coal and steel market. It was clear from the outset that, for its architects and proponents, this community was not merely about coal and steel but represented a first step in direction of the integration of Europe.

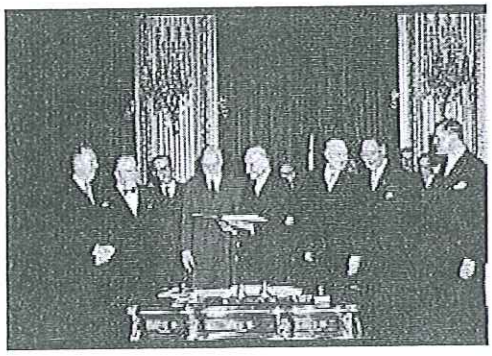

Figure 2.9 Robert Schuman's declaration of 9 May 1950 was fallowed, on 18 April 1951, by the singing of the Treaty of Paris, the first of the Treaties establishing the European Community.

2.5.2 The EEC (European Economic Community) and EUROATOM (European Atomic Energy) Treaties " Treaty of Rome "

European countries which formed the first phases of formal union establishment with ECSC wanted to expand the union beyond coal and steel sectors to other sectors. Consequently, they started searching for new treaties and organizations. The countries which became able to behave as a group and make common decisions after ECSC was established realized more economic and social reforms. Treaties of Rome have articles that are

[25] Craig P., Burca de G., 1998 "EU LAW", Oxford University Press, New York, p.9.

still valid today. They constitute a basis for the new coming topics into the EU law. Under this title, "Treaties of Rome", EEC and EUROATOM will be studied.

The Six moved quickly to be built on the achievement of the ECSC and explored options for extending sectoral schemes and more ambitios integration models.This momentum led in 1955, to the convening of the Messina Conference in order to explore how extending economic integration might be given new treaty basis.[26] The treaties of the European Economic Community (EEC) and the European Atomic Energy Community (EUROATOM), or the Treaties of Rome, signed on 25 March 1957 and came into force on January 1958 .[27]

Figure 2.10 The signing of the Treaties of Rome

A committee chaired by Paul-Henri Spaak, then Belgian Prime Minister and another strong advocate of integration, published its report in 1956 which contained the basic plan for what became the European Atomic Energy Community and the European Economic Community. This time, although the Treaties may have been politically motivated, the focus was specifically economic. The peaceful development of atomic energy under the responsibility of a permanent instition was considered to be of great importance, and as a clearly defined sector it was an appropriate area of energ policy which could be placed under common authority .[28]

The aim of the European Economic Community was to establish a common market based on the four freedoms of movement of goods, persons, capital, and services and the gradual convergence of economic policies. That meant an elimination of trade barriers between member states, establishment of an external Common Customs Tariff; the introduction of a common policy for agriculture and transport; the creation of a European Social Fund, the establishment of European Investment Bank and the development of closer relations

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[26] Preston C., 1997, "Enlargement and Integration in the European Union",
[27] Duisburg University, Business and Economics summer term, p.6. Available on site http://europa.eu.int/futurum/comm/index_en.htm
[28] Craig P., Burca de G., 1998 "EU LAW", Oxford University Press, New York, p.10-11.

between the member States. The first aim, the customs union was completed earlier than expected (1968). First measures under the CAP were adopted in 1962. Even so. at the end of the transitional period there were still major obstaclesto freedom of movement; the single market was not complete. The aim of EURATOM was to coordinate the research programmes on the peaceful use of nuclear energy, already under way or being prepared in the Member States .[29]

2.5.3 Merger Treaty

The Merger Treaty, signed in Brussels on 8 April 1965 and in force since 1 July 1967. The Merger Treaty, fusing the Executives of the European Communities (ECSC, EEC, Euratom), enters into force. From now on the European Communities will have a single Commission and a single Council. However, both continue to act in accordance with the rules governing each of the Communities.

Figure 2.11 Signing of the Merger Trearty by Luxembourg (Brussels, 8 April 1965)

2.5.4 Single European Act (SEA)

Single European Act is a treaty which was signed for fortifying the social, economic and political structure and also for eliminating the deficiency in these issues as the other acts. The common market is mentioned as content and it is focused on the free movement, capital and goods. What is aimed with this is to benefit from the sources with a good average of profitability. And thanks to this it is aimed to increase the prosperity and make sure the funds reach the places where they are needed without encountering any hindrances. Thus, the movements of investment in the EU will be encouraged. With the rising population the issues such as health, worker's security are touched upon. The improvement of the EU is taken into consideration and monetary sources are allocated to various headings.

[29] Dankert P., 1983, "The EC – Past, Present and Future", Basil Blackwell, p.22.

Under this heading, the details of this act which is shown as one of the biggest factors in the EU's adaptation common policies will be analysed.

In 1985 the British Commissioner, Lord Cockfield, had drawn up on behalf of the Commission a precise timetable for the completion of the single or internal market known as "White Paper" - setting out a long list of the various barriers which would have to be removed before a deadline of 1992. The Single European Act represented a commitment to this deadline, and despite the delay occasioned by a constitutional challenge to the Act in Ireland, the support of all of the Member States, including Thatcher's Britain, can be explained by the centrality of the "market project" to the SEA .[30]

The Single European Act, signed in Luxembourg and The Hague and came into force on 1 July 1987, was the first modification of the fundational treaties of the European Communities, that is to say. the Treaty of Paris in 1951 and the Treaties of Rome in 1957.

These are the main changes that the Single European Act introduced:[31]

- In the institutional field, it ratifies the European Council, that is to say, the periodical meeting of Head of State and Government, as the organism where major political negotiations take place among the member States and great strategic decisions are taken. The competences of the European Parliament were lightly reinforced.
- The main compromise agreed was to adopt measures guided to the progressive establishment of a common market over a period that would conclude on 31 December 1992. This would mean an area without obstacles to free movement of goods, people, services and capitals. This ambitious goal, summed up in 282 detailed measures, was broadly reached in the foreseen term. The common market became a reality.
- Different procedures were passed to coordinate the monetary policy of the member States, paving the way toward the objective of economic and monetary union.

[30] Craig P., Burca de G., 1998 "EU LAW", Oxford University Press, New York, p.11
[31] Tony Judt, "Postwar: A History of Europe since 1945", Penguin, 2006, p. 124.

- The Single Act included diverse initiatives to promote integration in the spheres of social rights (health and the workers' security), research and technology, and environment .
- To achieve the objective of a greater economic and social cohesion among the diverse countries and regions of the Community, reform and financial support to the denominated Structural Funds, European Agricultural Guidance and Guarantee Fund (EAGGF),
- European Regional Development Fund (ERDF), European Social Fund (ESF) was settled .

Figure 2.12 Margaret Thatcher : signed the Single European Act

2.5.5 Treaty on European Union (Maastricht Treaty)

The politic and economic movements the Single European Act has started in the union can only be regarded as the beginning of the new improvements after this date. The presidents of the member countries of the community gathering in the city of Maastricht in Holland after SEA have decided to change the structure of the union and reach it to a wider structure. This meeting in which the skeleton of the EU's latest form is formed has become a meeting in which much more politic decisions were taken when compared to other acts. Besides this, it is found convenient to devote this chapter to this act which is considered as the cornerstone of the history of the EU. Below, information will be given on the scope of the act and what it brings.


Figure 2.13 Treaty on European Union

The Maastricht Treaty (formally, the Treaty on European Union) was signed on 7 February 1992 in Maastricht between the members of the European Community and entered into force on 1 November 1993, under the Delors Commission. It led to the creation of the European Union and was the result of separate negotiations on monetary union and on political union.

The Treaty on European Union has two elements. The first stands alone, seperate from the existing Community legal order, whereas the second effects a substantial amendment of the Treaty of Rome and in so doing altered its name from the EEC Treaty to the EC Treaty - officially, the Treaty establishing the European Community. Prior to the Maastricht Treaty amendments, the term "European Community" was popularly used to denote the EEC, ECSC and Euratom together,but post - Maastricht the European Community is strictly the correct term only for the successor to the EEC .[32]

The treaty led to the creation of the Euro, and introduced the three-pillar structure (the Economic and Social Policy pillar, the Common Foreign and Security Policy or CFSP pillar, and the Justice and Home Affairs pillar). The CFSP pillar was built on the foundation of European Political Cooperation (EPC), but brought it under a treaty and extended it. The JHA pillar introduced cooperation in law enforcement, criminal justice, civil judicial matters, and asylum and immigration .[33]

Originally, the European Community (EC) dealt mainly with economic and trade matters. The European Commission and the European Court of Justice, both independent from the EC governments, had a lot of power within the system. The European Parliament, which was directly elected by the citizens of the EC member states, also had some power. The Governments controlled the remainder of the power, but since the mid-1980s had increasingly been doing so through majority votes. This system was called the Community

[32] Weatherill S., Beaumont P., 1999, "EU LAW", Penguin Books, Harmondsworth, Middlesex, Eng., p.11.
[33] Dankert P., 1983, "The EC – Past, Present and Future", Basil Blackwell, p.24.

method, or supranationalism, since international institutions not directly controlled by the governments wielded a lot of power, and members could have decisions they disagreed with imposed upon them through majority votes.

It was desired to add competencies in foreign policy, military and criminal matters to the European Community. However, many member states considered that these areas were too sensitive to be managed by the mechanisms of the European Community, and that the power of governments in relation to these areas had to be stronger than the powers of governments in the European Community. That is, an intergovernmental, as opposed to supranational, system would have to be used. Other member states feared that this might threaten the power of the independent supranational institutions (the European Commission, European Court of Justice and European Parliament) in relation to the economic matters then dealt with by the European Community. The three pillar structure was then developed to isolate the traditional Community responsibilities in the area of the economy (the Community Pillar) from the new competencies in the areas of foreign policy and military matters (the CFSP pillar) and criminal matters (the JHA pillar) .

2.5.6 Treaty of Amsterdam

The dynamism of 80s brought many novelties with itself. The years in which the trials of the liberalisation of the EU gained momentum are also these years. The EU saw liberalisation as the solution of its economic problems in mid 80s and with various legislations it adapted it to all its sectors. In 90s in which liberalism was literally experienced, Maastricht Treaty couldn't literally meet liberalism and due to this the union experienced some problems. Thereupon, the presidents of the member countries gathering in an intergovernmental conference signed Treaty of Amsterdam. In the treaty which will be discussed in much more detailed way below, 3 pillars forming the basic philosophy of the union were accepted. Under this heading, the general scope of the treaty will be touched on .

The next stage in the increasingly regular process of Treaty revision was already foreseen in the Maastricht Treaty itself. It was therein provided that a conference of representatives of the Governments of the member states would be convened to the Amsterdam intergovernmental conference (IGC) in 1996.

The aims of the 1996 IGC were far more modestly stated and the Amsterdam Treaty was declared to be about consolidation rather than extansion of Community powers, about improving processes and enhancing effectiveness rather than expanding competence.[34]

There are three parts to the Treaty, the first containing the substantive amendments to the TEU and to the Community Treaties,the second containing tidying-up amendments ostensibly to simplify the structure of the Treaties, and the third containing the general and final provisions on matters such as renumbering and ratification.[35]

The Treaty of Amsterdam amends the Treaty on European Union, the Treaties establishing the three European Communities and certain related acts. It does not eliminate the "three-pillar" (Community Pillar, The Foreign ad Security Policy, Police and Judicial Cooperation in Criminal Matters) structure of the European Union, although it modifies the content of each pillar, and, in addition redistibutes some content between the pillars (most of all, from the Justice and Home Affairs "third" pillar to the first, EC pillar). Accordingly, as after Maastricht, so too after Amsterdam; the four Treaties survive; the Treaty on European Union, the Euroepan Community Treaty, the European Coal and Steel Community and the European Atomic Treaty .[36]

Figure 2.14 Treaty of Amsterdam

[34] Craig P., Burca de G., 1998 "EU LAW", Oxford University Press, New York, p.33
[35] Craig P., Burca de G., 1998 "EU LAW", Oxford University Press, New York, p.33-34
[36] Weatherill S., Beaumont P., 1999, "EU LAW", Penguin Books, Harmondsworth, Middlesex, Eng., p.19.

2.5.7 Treaty on Nice

The theme of EU expansion was addressed again in 2000 in what became the Treaty of Nice. Signed in 2001, this treaty outlined a series of staged reforms to prepare the EU for enlargement. The treaty called for a reduction in the potential size of the European Commission, reforms to voting rules and processes in the Council of the European Union, and a reallocation of seats in the European Parliament to member states .[37]

The primary purpose of the Treaty of Nice was to reform the institutional structure to withstand the Enlargement of the European Union, a task which was supposed to have been carried out at the Amsterdam Inter-Governmental Conference (IGC), but the Treaty of Amsterdam failed to address most of the issues.

The Treaty provided for an increase after enlargement of the number of seats in the European Parliament to 732, which exceeded the cap established by the Treaty of Amsterdam. .[38]

The question of a reduction in the size of the European Commission after enlargement was resolved by a fudge, the Treaty providing that once the number of Member States reached 25, the number of Commissioners would be reduced by the Council to below 25, but without actually specifying the target of that reduction .

The Treaty provided for the creation of subsidiary courts below the European Court of Justice and the Court of First Instance to deal with special areas of law such as patents .

The Nice Treaty provides for new rules on closer co-operation, the rules introduced in the Treaty of Amsterdam being viewed as unworkable, and hence these rules have not yet been used.

In response to the failed sanctions against Austria following a coalition including Jorg Haider's party having come to power, and fears about possible future threats to the stability of the new member states to be admitted in enlargement, the Treaty of Nice for the first time adopted formal rules for the application of sanctions against a Member State.

The Treaty also contained provisions to deal with the financial consequences of the expiry of the ECSC treaty (Treaty of Paris (1951).

It was widely accepted that the Treaty of Nice has failed to deal with the basic question of wide-ranging institutional reform, the European Union institutions being widely viewed as overly

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[37] Preston C., 1997, "Enlargement and Integration in the European Union", Routledg, p.33.

[38] Wood, Steve., "The New European Union : Confronting The Challenges of Integration", Studies on the European Polity, Oct. 2007, p. 201.

complicated, and hence the establishment of the European Convention, leading to a new IGC in 2004, was agreed at Nice.

Figure 2.15 Treaty on Nice

The Commission and the European Parliament were disappointed that the Nice IGC did not adopt many of their proposals for reform of the institutional structure or introduction of new Community powers, such as the appointment of a European Public Prosecutor. The European Parliament threatened to pass a resolution against the Treaty; although it has no formal power of veto, the Italian Parliament threatened that it would not ratify without the European Parliament's support. However, in the end this did not come to pass and the European Parliament approved the Treaty.

Many argue that the pillar structure, which was maintained by the Treaty, is overly complicated, that the separate Treaties should be merged into one Treaty, and that the three (now two) separate legal personalities of the Communities should be merged, and that the European Community and the European Union should be merged with the European Union being endowed with legal personality. The German regions were also demanding a clearer separation of the powers of the Union from the Member States .

Nor did the Treaty of Nice deal with the question of the incorporation of the Charter of Fundamental Rights into the Treaty; that was also left for the 2004 IGC after the opposition of the United Kingdom .[39]

Unlike the Single European Act or the Amsterdam Treaty, the Treaty of Nice did not seek to broaden the authority of the EU. Rather, the role and powers of an enlarged EU were addressed elsewhere—in the Laeken Declaration of 2001 and by the Convention on the Future of Europe, convened in March 2002. By late 2002, all EU members had ratified the Treaty of Nice. However, Irish voters nearly forced a renegotiation of the treaty after

[39] Bulmer, Simon., Lequesne, Christian., "The Member States of the European Union", Oxford Univerity, June 2005, p. 78.

rejecting it in a referendum in 2001; many Irish worried that EU enlargement would reduce financial benefits received by Ireland. Nevertheless, Ireland's ratification was secured in a second referendum held the following year, putting the schedule for EU enlargement back on course .[40]

2.6 THE INSTITUTIONAL OUTCOMES

Each of the main institutions in the policy process has thus altered its behaviour as part of this chancing pattern.

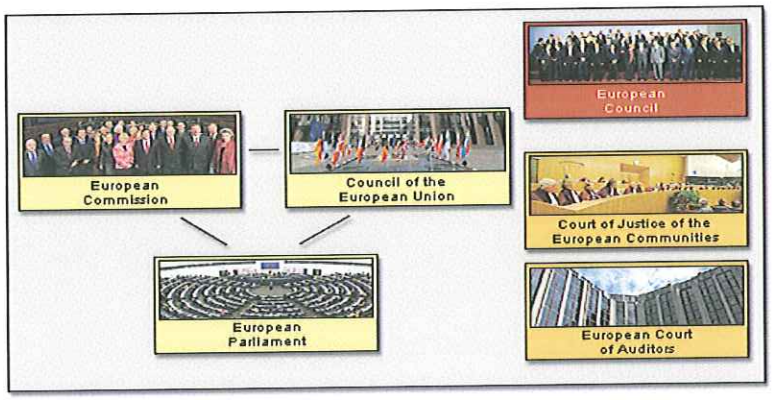

Figure 2.16 Institutions of European Union

2.6.1 The Commission

The Commission has had everything to play for in terms of acquiring policy credibility and political territory.It became a complex organ and spawned a variety of direct relationships with the clients of its policies,with expert,and with interlocutors in the member states.The ugly term 'comitology' for its formal relationships with interlocutors implies a heavy procedural bureaucratization.In crucial respects the image is misleading, since the Commission has also cultivated, often rather effectively, close and productive relationships with expert and has often been quicker to respond to new policy problems than the also bureaucratized and often conservative or tradition-bound processes of governance within the member states.Epistemic communities have developed around the commision and generated new policy ideas.New opportunities for exercising influence on policy definition have also been provided by the new relationships increasingly exploited by pressure groups

[40] http://europa.eu.int/scadplus/treaties/nice_en.htm

(Mazey and Richardson 1993)[41] and by regional-level public authorities and organizations concerned with local economic developments (Keating 1992).[42] One unexplored empirical question is how far these relationships contributed to the pozitive expectations of big firms from the single-market programme or to the lack of expressed anxiety from the regions about winners and losers from the single market.

On the other hand, the Commission's concern to get close to its clients also drew it into very close relationships with some of them.Here the Commission behaved more like a traditional goverment in acquiring the baggage of expectation of vested interests.Example abound in familiar areas—agriculture,sensitive industries,and the like. Also, though this phenomenon is also underexplored, some individual big firms were able to establish extremely close relationships wiht the Commission and to exert considerable leverage on policy: the R&D programmes are one example,and the increasing resort to contingent trade protection,through anti-dumping measures and voluntary restraint agreements, is another much criticized case (Cowles 1993).[43]

To produce a systematic audit of the Commission's performance goes beyond the scope of this chapter, but some broad observations might be substantiable. The Commission has shown a significant capacity in some, but not all, policy sectors to develop new ideas and to feed them through into policy proposals or agenda-setting for the EC/EU. Indeed sometimes the Commission is criticized for being too innovative, even eccentric in its suggestions. The obverse is also probably true, namely that where the Commission has been lacking ideas or out of touch with the relevant epistemic communities, its policy proposals have been quite vulnerable. Though proposals have still to be bargained with the Council, those that lack intellectual cogency are particularly vulnerable to erosion.

Ideas are all very well, but of little use unless capable of being transformed into practicable policies. Here the Commission suffers from a 'Catch 2' structural obstacle. Necessarily the Commission is operating a long way away from the coal-face and with little direct experience of 'hands-on' policy delivery. This sometimes frees it to be innovative, even idealistic, and often to be rather detached and relatively 'objective'. But its credibility is

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[41] Mazey,S.,and Richardson,J.(1992),'Environmental Groups and EC:Challenges and Opportunities',Enviromental politics,1/4: 109-28

[42] Keating, M.(1992), 'The Rise of the Continental Meso: Regions in the European Community', in L.J. Sharpe (ed.), The Rise of Meso Goverment in Europe (Londan:Sage).

[43] Cowles, M.Green(1994),'The Politics of Big Business in the European Community: Setting The Agenda for a New Europe', Ph.D.thesis (American University, Washington, DC).

always open to challenge precisely because of its 'irresponsibility' . The member governments in contrast have deep experience and ingrained policies, as well as direct political responsibility to electorates. But they also have the conservatism of habit and precedent and the weight of local patronage to defend. When problems are 'solved' as a result of European policies, member governments are quick to claim the credit. When problems are posed, or seem to be posed, by European policies, governments have often been quick to scapegoat the Commission. Thus it is hard for the Commission to win credit, but easy for it to attract blame.

As for the satisfaction of specific interests, the Commission has become recognized in its areas of active competence as a necessary interlocutor. The growth of lobbying in Brussels attests to the importance that a wide variety of special interests attach to trying to get the Commission to adopt their preferences and to produce proposals that reflect their concerns. Indeed in some cases special-interest representatives find a readier ear in Brussels than in capitals (Mazey and Richardson 1993a).[44] But here too the link between channels of influence and institutional support for the Commission is elusive. In relatively few areas does the Commission exercise monopoly policy powers and thus special interests divide their attention between the Commission and member governments. In any case special interests are fickle in their affiliations, since their concerns often have more to do with individual issues than systemic relationships. Another complication is that the Commission lacks the political resources to mediate between competing interests, because its policy competences are constrained and it has no direct political mandate.[45]

[44] Mazey,S.,and Richardson,J.(1992),'Environmental Groups and EC:Challenges and Opportunities',Enviromental politics,1/4: 109-28

[45] Keating, M.(1992), 'The Rise of the Continental Meso: Regions in the European Community', in L.J. Sharpe (ed.), The Rise of Meso Goverment in Europe (Londan:Sage).p.112

Figure 2.17 The European Commission is composed by 20 Commissioners of which two are from France, Germany, Italy, Spain and the United Kingdom, and one for each of the other member states. They are appointed for five-year terms, in line with the European Parliament, which approves the appointment of the Commission as a body.

2.6.2 The Council

The Council is both a European institution and the prisoner of the member states, or perhaps rather of the member governments. Such collective identity as it has developed is fragile and always vulnerable to competition between the member governments, as well as competition with the Commission. The remarkable growth of the Council with its vertical segments and horizontal layers reveals two paradoxical trends. On the one hand, the extension of policy authority to a process of European governance demands more and more of the energy of delegates from the member governments in the Council, better Councils, with ministerial participants and thousands of national officials. The intensity and intimacy oftheirinvolvement is unparalleled at the transnational level. Yet, on the other hand, this engagement is also aneffort to control the content and direction of European policies and to subject the Commission to continuous and detailed scrutiny. It also reveals what Alberta Sbragia calledthe resilience of "political territory" as a determinant of behaviour (Sbragia 1992a).[46] Thus the Council in its various formats is always there to second guess the Commission and often to deploy counter-arguments. The bargaining behaviour within the Council, from working groups of national experts to the elevated gatherings of ministers with political responsibility, is geared not to the production of bright ideas but to the translation of ideas into palatable decisions. Thus the Council rarely discusses general principles as distinct from detailed texts. Hence the new transparency code agreed after the Edinburgh European Council of December 1992 talks of opening up Council sessions to public gaze for discussions of principles, but the Council has not been able to deliver on its own promise in this respect. Although theCounciland especially the EC frequently produce statements of intent with big ideas forcollective action, they rarely produce detailed decisions that focus on the big ideas. Individual governments are also often more concerned to present the nuanced points onwhich they have won a concession from others in the Council than to present the core ideaof common policy development.

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[46] Sbragia,A. M.(1992a), 'Thinking about the European Future: The Uses of Comparison', in Sbragia (1992b), p.257

Figure 2.18 The Council of the European Union represents Member States' interests in the European Union.

In their defence many participants in the Council would argue that it is precisely the task of the Council to turn the more or less bright ideas of the Commission into practical policies. It is precisely because they each have their feet on the ground within the member states that they concentrate on points of feasibility and operational specifics. Of course there is substance in this defence, but there is also a distortion. Members of the Council are primarily concerned with the impact of policy within their own countries or with the impact of policy on other member states in so far as their own necessarily parochial concerns are affected. It is thus easier to view the Council as a loose composition of distinct national delegates than as a body oriented towards identifying the most appropriate collective policy. It was for this reason that Fritz Scharpf talked of a "joint-decision trap" created by the Council following a 'bargaining' mode of behaviour rather than a "problem-solving" mode (Scharpf 1988).[47]

In the past, analyses of the Council tended to blame the unanimity decision-rule for this joint-decision trap. The need to tie all participants into the same decision both enhanced the power of veto groups and concentrated negotiation on adding complexity to policy, in order to satisfy a wide array of special pleading arguments from each member state. Since the early 1980s, and more visibly since the SEA, QMV has become a more frequent decision-rule, making the Council much less dependent on formal consensus. This has enlarged the scope for the Commission to devise proposals that can get past the opposition of a few member governments. It has also enabled groups of governments with a clearly shared policy preference to rally to a particular side of the debate, whether as a propulsive majority or a blocking minority. Thus on some issues it has become possible to change the direction of collective policy and to escape from the 'decision trap'. Even on complex

[47] Scharpf,F. W. (1988),'The Joint-Decision Trap: Lessons from German Federalism and EUROPEAN Integration',Public Administration,66/3:239-78.

package proposals the Commission has found it possible in this changed environment to make its own preferred proposals 'yesable' to a surprising extent. The Delors-1 and Delors-2 packages on budgetary issues are striking examples. None the less QMV can also have the effect of repeatedly isolating some governments in a marginal minority and of diminishing commitments to those decisions to which a government has not assented.

In the Council governments thus contribute more by way of problems than by way of ideas, and the process has become geared more to restraining than to innovating. Yet this is an over-simplification. New ideas are sometimes fed in by governments or groups of governments. The Germans generated much of the push for environmental measures in the EC; the French instigated much of the debate on improving technological capacity; the British pressed earliest for market liberalization; the Spanish argued for the concept of EU citizenship. Thus new policy options can flow from specific governments and then be adopted; successful adoption has generally required both entrepreneurship by the Commission and coalition-building in the Council.[48]

One of the key functions of the Council is to deliver satisfaction for particular interests. The language of Council bargaining is permeated with the vocabulary of what is or is not deemed to be in the interests of the individual member states or some projection of these as wider Community interests. Here we need to be clear as to what is meant. The Council consists of representatives from the member states (actually, those who participate are delegated by member governments). Though they use the vocabulary of national interest, they frequently articulate more narrowly based interests, the partisan interests of particular parties in office, the sectional interests that command the ear of particular ministers or ministries, or those domestic interests that governments choose to promote—for example, favoured firms or favoured regions. There are interests within the member states that may not be much drawn into consideration by governments. So for both the Commission and the Council the spectrum of interests engaged is partial. In the case of the Council this is liable to produce discontinuities as electoral cycles bite on the process.[49]

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[48] Sbragia,A. M.(1992a), 'Thinking about the European Future: The Uses of Comparison', in Sbragia (1992b), p.264

[49] Sbragia,A. M.(1992a), 'Thinking about the European Future: The Uses of Comparison', in Sbragia (1992b), p.257

2.6.3 The European Court of Justice

The impact of the ECJ on the European policy process is undeniable and well embedded (Burley and Mattli 1993).[50] Our concern here is, however, limited to the ECJ's impact on ideas, problem-solving, and interest satisfaction, and to the consequences for the competition between the Council and the Commission. The way in which the ECJ has been a source of ideas is by elucidating general principles of European law; the examples are impressive direct effect, proportionality, equality, legal certainty, fundamental rights, and so on. Successive ECJ rulings have made a tangible difference to the bases on which EC rules have been defined and applied; they have on the whole enlarged the ground on which European public policies rest and strengthened the capacities of European institutions, especially the Commission, to act. Moreover, as Joseph Weiler has argued, the ECJ has endorsed a set of values to underpin European governance (Weiler 1992).[51]

Rulings from the ECJ have also solved practical policy problems by clarifying an issue that was the cause of controversy within the Council/ Commission dialogue. The most famous example by far was the *Cassis de Dijon* judgement, which enunciated the principle of 'mutual recognition' (1979). Though its direct scope is not as wide as posterity has claimed, this did open up a new avenue for collective rule-making and thus underpin the "new approach" to harmonization and market liberalization . Other judgements have been more controversial and have been viewed quite differently as problem-solving or problem-creating, depending on the perspective. The Barber judgement (1990) and subsequent line of cases (several decided in September 1994) on equal rights for men and women in occupational pension schemes (actually going back to an earlier 1976 ruling) settled what had otherwise been ambiguous or restrictive in the practice of employers and pension schemes. But these judgements also created problems by requiring from some employers substantial and costly adjustments, so much so that the Maastricht IGC was lobbied hard and successfully by several big employers to take a limiting decision, in itself a curious example of direct special-interest lobbying of the European Council.[52]

Through the ECJ and the opportunity for direct litigation 'individuals' have been able to seek legal redress and clarification of their entitlements and obligations. Whose interests

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[50] Burley, A.-M., and Mattli, W. (1993), 'Europe Before the Court: A Political Theory of Legal Integration' , International Organization, 47/1: 41-76

[51] Weiler, J. H. H. (1991), 'The Transformation of Europe', Yale Law Journal, 100/8:2403-83.

[52] Weiler, J. H. H. (1991), 'The Transformation of Europe', Yale Law Journal, 100/8:2403-83.

have been satisfied by this opportunity is less easy to state. One caveat to be noted is that you have to prove that you are an interested party to have *locus standi* and plead your case with the ECJ. Firms directly affected obviously find this easier to demonstrate than, say, the consumer vaguely defined. So the bias is in favour of access to litigation for the direct economic actor. The cases brought have been directed at both the Commission and member governments, as well as against other economic actors. As for issues of free movement of workers and equal treatment of workers, individual has meant individual workers, beyond whom stand cohorts of comparably situated individuals. Most cases have complained at the application of Community law by governments or firms within the member states.

Until recently it has been broadly argued that the ECJ's contribution has been to extend the reach of Community law, to sharpen its definition, and to reduce the scope for member states to vary legislation on issues within the orbit of Community competence. In this sense the ECJ might be argued to have been a political actor and not just a source of jurisprudence, or a least to be an active influence on the definition of policy options. The fact that the legal services of the Council and the Commission are such important parts of both organizations stands witness to the encroachment of ECJ rulings on the freedom of manoeuvre of policy-makers and politicians. Equally, the use to which ECJ rulings have been put by both policy-makers and politicians, from both national and European institutions, shows also that Community jurisprudence provides opportunities as well as constraints. Moreover, the ECJ impacts by developing doctrine and ideas and not just interpretation and enforcement of individual cases. However, recent judgements from the ECJ are beginning to reveal greater prudence. The judgement on how the EU is represented in the new World Trade Organization shows an erosion of the integrity of the first pillar of the framework.

There has been resistance, both legal and political, to the ECJ. National courts have not always accepted easily either the supremacy of European law or the judgements of the ECJ on individual issues. National politicians do not always welcome the constraints that the ECJ sets on them. Nor does the Commission always have an easy ride in proving its general interpretations or specific cases. Recently resistance to the ECI has become more focused and more tenacious. The ratification of Maastricht generated considerable contestation of the reach of Community law and criticism of the 'activism' of the ECJ. The ruling on the Treaty on European Union from the *Bundesverfassungsgericht* in October 1993 (Winckelmann

1994)[53] rang warning bells, suggesting that acceptance of EU decisions and of ECJ rulings could not be taken for granted. The subsequent ruling from Karlsruhe in January 1995 on the Community regime for the import of bananas is another shot across the bows of Community jurisprudence on issues at the heart of the agricultural and trade policy regimes. Indications that some member governments might want to limit the influence of the ECJ by treaty amendment at the next IGC are another signal of pressures to alter the balance between the institutions.

Figure 2.19 The European Court Of Justice

2.6.4 The European Parliament

In the early phases of European integration the EP lacked influence on policy development and was more decorative than effective. Gradually, since its acquisition of first budgetary powers and then some legislative powers, the EP has inserted itself much more directly into the institutional processes. Indeed the EP was perhaps the largest net beneficiary of the institutional changes in the TEU, having already won ground in the SEA. Some commentators would now argue that the overall result has precisely been to alter the institutional balance within the EU in favour of the EP, even though its powers remain nominally less than those of national parliaments *vis-a-vis* national executives and even though it is commonly argued that a democracy deficit persists.

How is this reflected in terms of our questions about ideas, problem-solving, and interest satisfaction? The the form of a political programme determining the composition of the executive branch and the relative weakness of party discipline. None the less, two sizeable and increasingly well-organized party groups—the Socialists and the European Peoples' Party—do now operate from broadly shared political platforms and often support policy

[53] Winckelman, I. (1994) (ed.), Das Maastricht Ureteil des Bundesverfassungsgerichts vom 12. October 1993,Documentation des Verfahrens (Berlin: Duncker and Humblot).

preferences that coincide with those platforms. They expect to cooperate more closely with commissioners and Council members from their political families. MEPs also regularly weigh into the institutional debate in support of strengthened powers for not only the EP but also other "collective" European institutions. As George Tsebelis has recently argued, the EP is exploiting its existing leverage to influence "agenda-setting" within the EU (Tsebelis 1994).[54] The requirement for assent from the EP on some important policy issues, such as enlargement and external agreements, has extended the influence of the EP and provided some scope for linkage with its own ideas about the development of the EU. Some specific new ideas can be generated by the EP voting budget lines and demanding programmes to use them, as it did in arguing for what became the Phare democracy programme.

The EP plays less of a role in practical problem-solving, in any case a less obvious parliamentary task. None the less, EP amendments to and modifications of policy proposals have rather surprisingly often been incorporated. In a parliamentary body where expertise is a cultivated attribute by many members, the 'expert' MEP has scope to introduce practical proposals as well as broad comment. In some very precise instances there has been a direct partnership between MEPs and the Commission or Council in the management of a particular issue—one striking example was the role of a few MEPs in facilitating the absorption of the former East Germany into the then EC(Spence 1991).[55]

As for specific interests and the role of the MEPs in promoting them, the dog that has barked remarkably rarely is 'national interest'. Votes or position-taking on national and cross-party alignments are infrequent and indirect. We know that lobbyists and special interests pay increasing attention to MEPs and also that the recent applicants for accession from EFTA countries worked hard to convince MEPs of the merits of their case, though we know less about the correlation between lobbying and policy results. Regional interests have beaten a path to the EP and do look for opportunities to persuade 'their' MEPs to promote their cases, much as do their American counterparts *vis-avis* the US Congess. Tales circulated of regional side-payments offered to induce EP assent from doubtful 'southern' MEPs for the EFTA enlargement in May 1994. It remains to be seen where and how the new Committee of the Regions will locate itself in the process.

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[54] Tsebelis, G. (1990), Nested Games (Berkeley: University of California Press).

[55] Spence, D. (1991), 'Enlargement without Accesion: The EC's Respond to German Unification' , RIIA Discussion Paper No.36 (Londan: Royal Institute of International Affairs).

Figure 2.20 The European Parliament is the only European institution directly elected by the citizens of Europe. Composed of 730 directly elected members from 25 Member States, the European Parliament is the largest multinational legislative parliament in the world. It meets in Strasbourg once a month in plenary and in Brussels for committees, political group and delegation meetings and mini plenary sessions. The Parliament represents 450 million citizens of the Union.

3. TRANSPORT & TRANSPORT POLICY

3.1 OVERVIEW

Transport is one of the Community's earliest common policies. Since the Treaty of Rome entered into force in 1958, transport policy has focused on removing obstacles at the borders between Member States so as to facilitate the free movement of persons and goods. To that end its prime objectives are the completion of the internal market for transport, ensuring sustainable development, the deployment of major networks in Europe, spatial management, improving safety and the development of international cooperation.

The transport industry also occupies an important position in the European Union (EU), accounting for 7% of its gross national product (GNP), 7% of all jobs, 40% of Member States' investment and 30% of Community energy consumption. Demand, particularly in intra-Community traffic, has grown more or less constantly for the last 20 years, by 2.3% a year for goods and 3.1% for passengers.[56]

The advent of the single market marked a turning point in the common transport policy, since the abolition of frontiers and other liberalisation measures - including liberalisation of cabotage - inherent in it make it possible to keep pace with the growth in demand and tackle problems of congestion and saturation.

But the liberalisation of transport has taken various constraints into account:

- a social constraint, so that the freedom to provide services does not result in the strictest national legislation being bypassed. Liberalisation of services has therefore been accompanied by harmonisation of social conditions, of the rules governing the provision of services and of qualifications;
- an economic constraint, so that investment in infrastructure is not exploited by transport undertakings which play no part in their financing: this is of particular concern to the road transport sector. Measures should also be taken to make sure that the way rail transport is organised does not perpetuate the current fragmented state of this form of transport;
- a route-guarantee constraint, so that the introduction of new factors of competition does not put in doubt the continuity of transport links between peripheral (island) and central (mainland) areas.

[56] Stevens, Hnadley., "Transport Policy in the European Union" The European Union, March 2004, p. 26.

In this chapter, I aimed to give a clear picture of the status of all modes of transport sectors in EU, and to look at the background and history of EU's strategies affecting transport so as to understand current policies, and to provide indications of the priorities for the future.

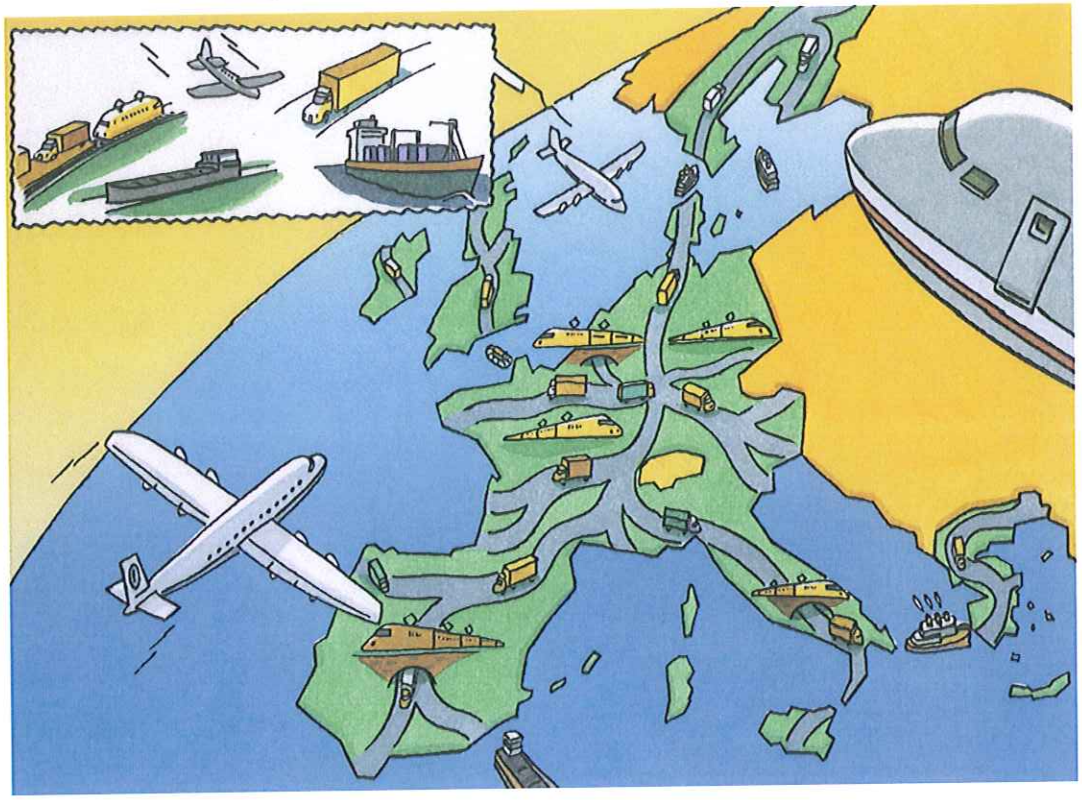

Figure 3. 1 European Transport Policy

3.2 BRIEF HISTORY OF COMMON TRANSPORT POLICY AND EC TREATY

When the Treaty of Rome was signed in 1957, the Europe of the six (France, West Germany, Italy, Netherland, Belgium, and Luxembourg) was a continental block which contained at least four national markets (if one takes Benelux market as one). The focus of attention was on modes of inland transport: rail, road, and inland waterway transport. Title IV of Part Two of the Treaty was devoted to transport. There were eleven articles in total (from article 74 to article 84) and only one paragraph in one of those articles for maritime and air transport (Article 84(2)).

The founding principles of the Common Transport Policy (CTP) were laid down in the 1957 Treaty of Rome which established the European Economic Community (EEC). However, the Member States prowed unwilling to relinquish any real control of national transport markets. Consequently, in the early years of the EEC, only a few general measures, such as rules on state aids and basic provisions to facilitate road haulage, were

adopted. The Commission established one key point in 1974, when the court of Justice ruled that, although the spesific provisions establishing the CTP applied only to inland modes, aviation and maritime transport were nevertheless still subject to the general provisions of the treaty.

Although the Commission attempted to develop the CTP during the 1970s and early 1980s, progress remained slow and piecemeal. However, in 1983, the European Parliament, which had generally supported the Commission's efforts, took the Council of Ministers to the Court of Justice for "failing to introduce a common policy for transport and in particular to lay down the framework of such a policy in a binding manner", as required by the Treaty. In its May 1985 landmark ruling, the Court judged that the Council had indeed "failed to ensure freedom to provide services in the sphere of international transport and to lay down the conditions under which non-resident carriers may operate transport services in a Member State", and that it was, therefore, in breach of the Treaty.[57]

The ruling, which effectively obliged the Council to take action, was to become a turning point in Community transport policy. Shortly afterwards, the Commission published its ground breaking white paper on the single market, with transport a very significant component within the overall strategy. The 1987 Single European Act added further momentum by introducing qualified majority voting in the Council for aviation and maritime transport issues.[58]

These developments, taken together, amounted to a major transfer of transport policy powers from the national capitals to Brussels. By 1992, legislation underpinning the single market in the aviation, maritime and road transport sectors was in place, while the more troublesome process of deregulating the waterway and rail markets was also under way. The Maastricht Treaty, however, brought about a substantial change of emphasis. By necessity, previous initiatives had been largely market driven. Under the revised Treaty provisions, the implementation of "measures to improve transport safety" became an explicit objective under the Common Transport Policy. The Treaty text also put a much stronger accent on the environment, stipulating that "environmental protection requirements must be integrated into the definition and implementation of other Community policies", while the addition of a new Title on trans-European networks

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[57] B. De Borger., Proost, Stef., "Reforming Transport Pricing in the European Union : A Modelling Approach", Transport Economics, Management and Policy Series, Oct. 2004, p.57.

[58] Mccormick, John., "Environmental Policy in the European Union", July 2001, p. 33-34.

focused attention more strongly on infrastructure development. These changes together gave rise to the transport policy objective "sustainable and safe mobility".[59]

This approach, which remains fundamental to present-day EU transport policy, was elaborated by the Commission in the important 1992 white paper, entitled "The future development of the Common Transport Policy". This paper, which has guided the EU's transport policy throughout the decade, suggested that future initiatives should focus on five main components: the development and integration of the Community's transport systems on the basis of the internal market; safety; environmental protection; a social dimension; and external relations. The aim, it said, should be to move away from a single market based approach to "a more comprehensive policy designed to ensure the proper functioning of the Community's transport systems, on the basis of an internal market in which any remaining restrictions or distortions should be eliminated as rapidly as possible while taking into account the new challenges likely to confront transport policy".

This strategy was further refined in 1995 when the Commission published its follow-up paper for a "Common Transport Policy action programme". It stated: "Efficient, accessible and competitive transport systems are vital to the society and the economy of the Union. They ensure the well-being and quality of life of its citizens as well as the prosperity of its businesses. The links they provide are essential for the internal cohesion of the Union both in regional and social terms. At the same time transport policy must reconcile the need for mobility with the imperatives of ensuring a high level of safety and protection of the environment."

The paper rationalised the five priorities of the CTP under three themes: "quality improvement", encompassing the development of integrated and competitive transport systems while taking account of environmental and safety objectives; "single market", covering initiatives on market access and structure, as well as costs, charges and pricing, and social matters; and the "external dimension". The action programme itself consisted of an ambitious agenda of planned initiatives grouped under the same headings, which the Commission hoped could be put into effect over the period 1995-2000.[60]

In December 1998, as the mandate of the Commission President Jacques Santer was nearing its conclusion, the Commission published a further Communication, updating the action programme, entitled "Sustainable mobility: Perspectives for the future". It suggested

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[59] Mccormick, John., "Environmental Policy in the European Union", July 2001, p. 105.
[60] Stevens, Hnadley., "Transport Policy in the European Union" The European Union, March 2004, p. 64.

that significant achievements had been made since 1995, but that it hoped for faster progress in some areas. For example, it said, general support for common principles on charging for infrastructure and external costs had been undermined by continued "divergences of opinion and practice". Furthermore, it said, social concerns had arisen "in part due to the adaptations following liberalisation". Thirdly, with regard to external relations, it said problems continued in areas such as air transport relations with the US, the adjustment of Member States' bilateral maritime arrangements with third countries, and negotiations on land transport with the countries of Central and Eastern Europe. In setting out priorities for the future, the Commission said it did not want to constrict the activities of the incoming administration. Nevertheless, it put forward a number of general ideas as a basis for discussions.

The fundamental themes of the CTP should remain unchanged, the December 1998 paper, argued. Long-term priorities should include the evaluation and potential alteration of market observation mechanisms and regulatory regimes, notably with regard to state aid and rules on public services; there should be an increasing focus on measures to improve interoperability, and on the development of intelligent transport systems. Improved safety should remain "a vital objective", while environmental issues should be reviewed with a strong focus on the action necessary to "reduce the dependence of economic growth on increases in transport activity and of such increases on energy consumption". Actions to carry forward the enlargement process, it insisted, should remain at the heart of external relations activities under the CTP.

The Amsterdam Treaty, which entered into force in May 1999, will certainly prove to be a further major milestone in the development of EU transport policy. By extending the codecision procedure to all measures based on the EC Treaty's Titles on transport and environment, it has given the Parliament vastly increased powers to influence transport policy. It has also introduced new and stronger requirements for environmental objectives to be integrated into all other policy areas, and for single market measures to embrace a high level of environmental protection. Moreover, new provisions in other areas, such as consumer policy, are likely to affect the transport sector. The impact of these changes will begin to influence policy in 2000 when the newly-appointed Commission led by President Romano Prodi has settled in, and the Christian Democrat dominated Parliament, with many new MEPs, has begun to realise the full extent of its new powers.

Within the Prodi Commission, the Spanish right-wing politician Loyola de Palacio has responsibility for transport and energy affairs, as well as for relations with the Parliament. Even before her formal appointment she had signalled a change of emphasis in the Commission's transport policy. In answering written questions from the European Parliament, she outlined "five major objectives" to guide her work in the 2000-04 period:[61]

- Better functioning of the internal market for transport in the interests of efficiency of the system, by pursuing a strategy to integrate national markets. In relation to this objective, one might cite the major progress which needs to be made with regard to rail transport;
- investment (public, private and in partnership) in infrastructure, including in intelligent traffic management systems. Two fundamental initiatives should be mentioned here: the process of revision of the guidelines for the development of the trans-European transport network and the Galileo satellite navigation programme;
- improving the integration of transport in all regions of the Union and among the various modes of transport; one of the major priorities of the new Commission will be to combat the tendency towards greater delays in air transport;
- safety and the environment. If the various institutions were to work out a strategy for increasing the integration of the environmental dimension into the Common Transport Policy, this would make it possible to render more effective measures to ensure sustainable mobility, as well as raising their profile;
- internationally, making the Union more effective at defending its interests in bilateral and multilateral relations. The Union will particularly be concerned with two main subjects: enlargement and the WTO millennium round.

3.3 DIFFERENT APPROACHES TO THE COMMON TRANSPORT POLICY

Transport in the European Union was—and to a large extent still is—characterized by a great measure of governmental intervention and a confused network of bilateral and multilateral inter-state agreements in which the Member States used to and still do participate. One of die elements of national transport policy was for Member States to support their own carriers and protect them from international competition.

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[61] Gomez, A., Jose., R., Gines and Ibanez, "Competition in the Railway Industry: An International Comparative Analysis", Transport Economics, Management and Policy, Dec. 2006, p. 163.

The transport sector is one of the few sectors in which the majority of the fundamental principles of the Community have not been implemented or, at least, have only been applied after enormous delay. Amongst them figures most significantly the freedom to provide services. The basic reason for the delay in the principle being applied in transport was the apparent direct inapplicability of Ankle 59 of the Treaty in transport matters. As the Court held for the first time in its judgment in the French Seamen case, Article 61(1) of the EEC Treaty established a special exemption from the general rules of the Treaty relating to the freedom to provide services in transport matters. Article 75 of the Treaty, in turn, provided that, within the framework of the common transport policy, the Council would have to establish "the conditions under which non-resident carriers may operate transport services within a Member State". By virtue of Article 84(1), this provision is only applicable to transport by rail, road, or inland waterways. With reference to maritime and air transport, Article 84(2) of the treaty conferred upon the Council the power to "decide whether, to what extent, and by what procedure appropriate provisions may belaid down for sea and air transport".[62] From the whole of these provisions one could interpret, as the Court expressly did after 1986, that the principle of freedom to provide services was not directly applicable to maritime and air transport nor to inland transport except if, and on such terms as the Council decides. Advances infreedom of transport services were thus left subject to the will of the Coincil which, even now in early 1996, maintains specific restrictions on the full and unconditional application of this basic principle of the EG in most forms transport.[63]

The absence of interest in creating a single transport market and the differences of opinion between the Member States have their roots in history and geography. The Benelux countries, due to their small size, have developed transport by road or inland waterway for bulkier goods to a greater extent, while in France and Germany, where the distances are greater, rail has been given priority, and measures have been taken to limit the long-distance transport of goods by road. Italy has also made great railway investments to foster the development of the southern regions. The remainder of the Community countries have developed road transport as a priority. These differences in the structure of the national transport systems have meant that, in order to reach a common policy, the conflicts of interest between Member States have had to be overcome

[62] Stevens, Hnadley., "Transport Policy in the European Union" The European Union, March 2004, p. 51.
[63] Stevens, Hnadley., "Transport Policy in the European Union" The European Union, March 2004, p. 53.

Therefore, transport policy has had a slow start. The debate between the Member States has centred on whether harmonization of the conditions of competition should precede liberalization or vice versa and on whether the adoption of measures in the various sector of interest would have to be made on a case-by-case basis or as part of an overall plan.

With respect to transport by road, rail, and inland waterways Benelux adopted a favourable stances to the freedom to provide services with in the single market, whilst Germany and Italy laid stress on the need to harmonize the conditions of competition, before opening up national markets to foreign competition, in order to protect their own transport undertakings.[64]

In maritime transport, the United Kingtom, Denmark, and Greece have been the most ardent defenders of freedom of navigation. In the case of Greece, its genarally liberal stances has not prevented it maintaining protectionist points of view with respect to cabotage traffic to and from its numerous islands, on grounds of national security. France, Germany, Belgium, and Italy, with far smaller fleets, have adopted a generally more protectionist stance. Spain and Portugal further reinforced this tendency when they joined the Communities. The accession of Austria, Finland, and Sweden has won over followers to the liberal faction.[65]

The differences between the Member States' points of view in relation to air transport have been minor since the majority of them were in favour of reserving one half of air traffic for their own companies and not allowing access to their national markets by companies from other Member States. The only Exceptions to this rule are in the United Kingdom, where there are no public companies in the sector and, to a lesser extent, the Netherlands and the Nordic and Scandinavian Community countries.

Only the years and the gradual assumption of national competences by Community policy have contributed to reducing the differences between the more liberal and the more regulatory and restrictive countries.

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[64] Mccormick, John., "Environmental Policy in the European Union", July 2001, p. 91.
[65] Stevens, Hnadley., "Transport Policy in the European Union" The European Union, March 2004, p. 87.

3.3.1 Three Phases of the Common Transport Policy

3.3.1.1 First Phase (1958 – 1973/74)

The first phase of Community transport policy runs from the entry into force of Treaty of Rome to 1973/74. During this phases, the EC, guided by the Commission, concentrated almost exclusively on attempting to create a common market for transport by road, rail, and inland waterways, opening up national markets to competetion between carriers from all the Member States. The Commission formulated its ideas in a 1961 Memorandum and in a 1962 Action Programme, which got a cool reception in the Member States.[66]

Given that the provisions of the Treaty were not explicit as to what it should contain, and that the Member States did not appear very disposed to create a common transport services market, the first phase of the common transport policy (CTP) evolved amidst discussions between the Commission and the Member Slates over the interpretation of the Treaty.

3.3.1.2 Second Phase (1973/74 – 1983/85)

In 1973, at the end of the first phase, the accession of Denmark, Ireland, and the United Kingdom to the EC introduced more liberal, and less land-centred, views into a stagnating transport policy.

In October 1973, the Commission re-defined its strategy with regard to the Member States in a Communication to the Council on the development of the CTP. The Commission stopped putting forward an overall liberalizing policy through the rapid dismantling of barriers on entry to the national transport mar kets. Instead, and despite continuing to emphasize the need to apply the principle of free provision of services in the sector, it adopted the more cautious stance of accepting what was on offer from the Member States, on a case-by-case basis and centred its efforts on the harmonization of conditions of competition.

On the other hand, in 1974, two fundamental events took place for the development of the CTP in the maritime and air transport sectors: the Court gave judgment in the French Seamen case, and, under the auspices of the United Nations, the United Nations

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[66] John, F. L. Ross., "Linking Europe : Transport Policies and Politics in the European Union", Feb. 1998, p. 56.

conference on Trade and Development (UNCTAD) Code of Conduct for liner Conferences was adopted.

Despite the Court's support for its arguments and the ways opened up for the development of a transport policy for all modes of transport, the Commission continued channelling its efforts into inland transport. It secured the adoption by the Council of a series of technical regulations which did not really encompass the CTP's true objective: namely, to obtain the creation of a single market by applying the principle of freedom to provide transport services in the Member States.[67]

3.3.1.3 Third Phase (1983/85 – 1993)

From 1983 onwards, the Commission presented various proposals for a structured development of the CTP, in several memoranda concerning the inland (1983), air (1984) and maritime (1985) sectors.[68]

Subsequently, the fact that the Council had not adopted minimum measures to ensure freedom to provide inland transport services between Member States, nor adopted conditions in which a Community carrier would be allowed to carry out inland cabotage operations in countries other than his own, induced the European Parliament to bring proceedings for failure to act against the Council, pursuant to Article 175 of the Treaty. Although this ruling concerned inland transport only, its consequences were also felt in the other modes of transport.

A second crucial event in this period was the adoption and entry into force of the Single European Act in July 1986. The Act represented the Member States' political agreement to complete the internal market by no later than 1 January 1993. Many of the advances which occurred in maritime and air transport in 1986 and 1987, and the 1988 agreement to liberalize the inland transport market then followed. Beforehand, none of the Commission's proposals had been received with the slightest enthusiasm by the Member States.

The Community then embarked on a process of liberalization which, guided by the Commission, sought to create greater opportunities for commercial initiatives in transport within the Community. The years since 1985 have witnessed a phenomenal proliferation

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[67] Stevens, Hnadley., "Transport Policy in the European Union" The European Union, March 2004, p.117.

[68] John, F. L. Ross., "Linking Europe : Transport Policies and Politics in the European Union", Feb. 1998, p. 38.

of EC legislation. This has been pre-eminendy directed to unleashing competitive forces and to winning, sector by sector, transport markets over to competition.[69]

3.4 MODES OF TRANSPORT

In adopting the White Paper entitled 'European transport policyfor 2010 : time to decide'[70] ,the European Commission placed users' needs at the heart of its transport strategy, ensuring that the development of transport in Europe goes hand in hand with an efficient, high-quality and safe service for citizens. The White Paper and the proposals it contains also constituted the first practical contribution in terms of a sustainable development strategy for transport, in an attempt to reduce pressure on the environment and to prevent congestion,while maintaining the EU 's economic competitiveness.

A mid-term review of the White Paper was released during the summer of 2006, in the form of a communication entitled 'Keep Europe moving -sustainable mobility for our continent'.[71] While the objectives of transport policy have remained stable, the general context has evolved,as a function of a number off actors, including:

- enlargement, allowing the possibility to expand trans-European networks to corridors that are particularly suitable for rail and waterborne transport;
- consolidation within the transport industry, specially inaviation and maritime transport,as well as the effects of globalisation leading to the creation of large logistics companies with worldwide operations;
- a greater focus on technology, research and innovation are increasingly important for the transport sector,for example, through the modernisation of air traffic management, decongesting European transport corridors,promoting urban mobility,inter-modality and inter-operability,safety and security in transport; among the most promising areas are : intelligent transport systems involving communication, navigation and automation ; engine technology providing increased fuel efficiency ; and promoting the use of alternative fuels;

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[69] John, F. L. Ross., "Linking Europe : Transport Policies and Politics in the European Union", Feb. 1998, p. 40.

[70] White Paper entitled 'European transport policy for 2010: time to decide',12 September 2001, COM(2001) 370 final .

[71] Communication from the European Commission to the Council andthe European Parliament,'Keep Europemoving —Sustainable mobilityfor our continent ',mid-term review of the European Commission 's 2001Transport White Paper,22 June 2006,COM(2006)314 final .

- environmental commitments —such as those under the Kyoto Protocol ,involving CO2 emissions ,air quality,noise pollution, and land use;
- changes in the international context —such as the threat of terrorism, or globalisation that has affected trade flows and increased demand for international transport services.

Transport infrastructure is an integral part of the European Union, as it provides a basis for the mobility of both people and goods within and between the Member States.There are number of liberalisation policies within this domain, including efforts to harmonise technical standards and open-up access to railway networks and the integration of air traffic control systems into a single European sky,as well as the development of trans-European networks (TENs) for transport and energy.

Eurostat 's transport statistics describe the most important features of transport, not only in terms of the quantities of freight and passengers that are moved each year, or the number of vehicles and infrastructure that are used, but also the contribution of transport services to the economy as a whole (as this sector contributes around 4 % of the EU-25 's work force). Data collection for transport statistics is supported by several legal acts obliging the Member States to report statistical data. In addition to this,there are voluntary agreements to supply additional data.

During the last 50 years, there have been significant changes in the modal break down of transport for passengers and freight. Sea, inland waterways and railways still play an important role, but the predominant mode of transport has clearly become road transport. The increase in the use of road transport has been fuelled by demands for increased mobility from individuals and increased flexibility and time liness being demanded by enterprises.

Approximately 50% of all goods that are transported within the European Union,and 80% of all passengers travely road. Despite considerable improvements in transport technology and infrastructure, this places enormous stress on the road network and society as a whole,with congestion and air pollution common place,especially in urban areas and on some key transport axes.The competitiveness of the European Union maybe affected by these delays and externalities.

Although motorways constitute only a small part of the entire road network,their length as more than tripled over the last 30 years.The number of passenger cars per 1 000 inhabitants

is sometimes used as an indicator for the standard of living.The number of passenger cars in use within the EU-25 increased to almost one for each two inhabitants by 2004, with the highest ratio of 659 cars per 1 000 inhabitants in Luxembourg.

Table 3.1 Modal split of inland passenger and freight transport (1)

	(% of total inland passenger km),2003				(% of total inland freight transport in tonne-km),2004		
	Passenger Cars	Buses	All Trains		Railways	Roads	Inland Waterways
EU -25	:	:	:		17.6	76.5	5.9
EU -15(2)	84.9	8.6	6.5		14.0	79.2	6.8
Belgium	83.3	10.4	6.3		12.0	74.9	13.1
Czech Rep.	81.2	81.2	7.7		24.7	75.2	0.1
Denmark	80.4	11.9	7.7		8.6	91.4	
Germany	85.3	7.6	7.1		19.1	66.9	14.0
Estonia	:	:	:	:	67.3	32.7	:
Greece	72.7	25.5	1.8		:	:	
Spain	83.5	11.9	4.7		5.1	94.9	
France	86.6	5.0	8.4		17.0	79.9	3.2
Ireland	74.8	20.2	5.0		2.3	97.7	
Italy	83.3	11.4	5.3		10.5	89.5	0.0
Cyprus	:	:				100.0	
Latvia(3)	66.5	25.5	8.0		71.6	28.4	
Lithuania	84.6	13.5	1.9		48.7	51.3	0.0
Luxembourg	82.3	14.1	3.6		5.6	90.9	3.5
Hungary	61.6	24.9	13.5		28.0	65.9	6.1
Malta	:	:				100.0	
Netherlands	87.3	4.5	8.2		3.8	65.0	31.2
Austria	79.9	14.1	7.9		31.4	65.6	2.9
Poland	77.6	13.5	8.8		33.5	65.8	0.7
Portugal	87.3	9.5	3.2		5.3	94.7	
Slovenia	83.5	13.5	3.0		27.8	72.2	
Slovakia	71.4	22.1	6.6		34.3	65.4	0.3
Finland	84.4	10.9	4.7		23.8	76.0	0.3
Sweden	82.9	9.0	8.1		36.1	63.9	
UK(3)	82.1	6.4	5.5		11.8	88.1	0.1
Iceland	88.8	11.2				100.0	
Norway	88.7	7.0	4.3		13.8	86.2	
Bulgaria	:	:	:		29.2	66.9	3.9
Crotia	:	:	:		21.7	76.7	1.6
Romania	:	:	:		25.7	66.7	7.7
Turkey	:	:	:		5.6	94.4	

Compared with the other transport modes,the volume of passengers and freight transported by rail has increased at amodest pace in recent years, although this marked a changefrom

declining passenger and freight figures that were apparentup to the early 1990s. The increase in the use of rail as a mode of transport was in spite of a shrinking network,indicatingincreased efficiency.The high-speed rail network is currentlybeing extended in a number of European countries.

Given that tonne-kilometre figures are not available, the performance of sea and air transport of goods is not easily comparable with those of the other (inland) transport modes. The information available for the volume of goods handled is instead provided in terms of the weight transported to the major maritime ports of the EU.The total volume of goods handled in 2004 was over 3 500 million tonnes;a large part of the increase in recent years may be attributed to the increase in the import of oil and oil-related products.

Compared with maritime transport, the volume of freight and mail transported by air is comparatively low.However, the average unit price of goods transported by airtends to be considerably higher than for the other modes of transport.

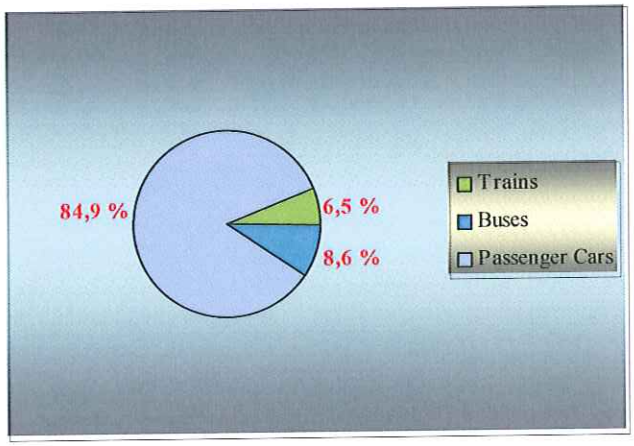

Figure 3. 2 Modal Split of inland passenger Transport, EU-15, 2002 (% of total inland passenger-km)

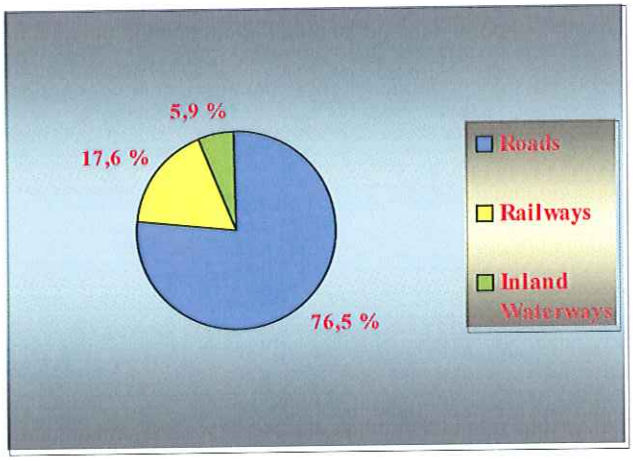

Figure 3. 3 Modal split of inland freight transport, EU-25, 2004 (% of total inland freight tonne-km)

3.4.1 Road Transport

The fundamentally national nature of road transport in the early days of its development meant that the majority of Member States adopted measures without giving thought to their neighbours. Generally, public restrictions on transport activity were implemented by limiting access to the market, fixing tariffs, imposing tax charges to recover infrastructure expenses, and requiring the satisfaction of certain techical requirements (for vehicles) and professional requirements (for drivers). All of these factors are to be found nowadays in the inland CTP.[72]

Originally, these measures were intented to limit the effects of road transport competition on rail transport and served as protection to national carriers already established who, until the 1960s, did not generally have to face competition from carriers from other countries.

With the creation of the European Communities, exposure to external competition became a worrying risk and the national carriers' protectionist interests manifested themselves in a distinct lack of progress in the CTP. The differences between Member States with regard to the treatment of the weights and dimensions of vehicles,techical controls, social regulations, qualifications for joining the profession and tax treatment surfaced clearly and served to block any form of integration.

The number of community measures in these areas has increased dramatically. Once the illusion that a rapid liberalization would be achieved was lost and in the absence of areas in which the Member States would have been more receptive to its proposal, the Commission moved the emphasis of transport policy -- which until the mid-80s focused almost purely on inland transport -- to the harmonization of conditions of competition. Harmonization has now been largely accopmlished for conditions of access to the carrier's profession and for technical issues and social matters.

Tax harmonization has been far harder to achieve and remains limited. In 1991, an initial agreement was reached to harmonized the level level of taxation on road diesel oil but it was only in 1993 that the first measures were adopted to harmonize taxes on vehicles and the toll system on motorways. Thus, a system for charcing non-resident carriesrs the cost of using the infrastructures was devised.[73]

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[72] J., F. L. Ross., "Linking Europe :Transport Policies and Politics in the European Union", Feb. 1998, p. 97
[73] J., F. L. Ross., "Linking Europe :Transport Policies and Politics in the European Union", Feb. 1998, p. 99

Beyond harmonization, even in areas of great commercial significance, the tax of achieving a still incomplete common market, has also been arduous.

Council regulations 11 of 1960 was the first measure of any relevenca adopted in the sphere of inland transport. It derives directly from article 79 of the Treaty of Rome. Both the Treaty and the regulation prohibit discrimination in tariffs and conditions of transport on the basis of the country of origin or destination of the goods. The original intention of both was also to bring an end to the tariffs supporting national carriers. These are prohibited by Article 80 of the Treaty. Member States could use direct subsidies to transport undertakings instead; a substitute which is more effective, less discriminatory, and more susceptible to direct control by the Commission.

Another key measure during the first stage of the common inland transport policy was Council Regulation 1017/68.[74] This was the first of the competition regulations derived from Regulation 141, (the regulation which excluded transport services from the application of Regulation 17).

Together with this regulation, the regulations which best illustrate the development of the inland CTP towards liberalization and unification of the Community market are the ones relating, on the one hand, to non-resident carriers' access to national markets in international transport and cabotage and, on the other, to the system of pricing in transport.

With reference to access to the goods transport market, "Community quotas" for permits were established with effect from 1968. These gave their holders the right to provide transport services between any pair of Community countries. Cabotage, in other words the provision of transport services within a single Member State by a carrier from another Member State was prohibited, or subject to numerous restrictions, in almost all of the Member States.

Community quotas for international transport were small to start with, but they became bigger with time. In 1988, it was decided to abolish the quota system for transport between Member States and for traffic in transit to non-Member States as from 1 January 1993. In their place, a system of Community licences granted on the basis of qualitative criteria was to be instituted.

Finally, with regard to cabotage within a single Member State, the Council also introduced in 1989, by way of an initial and limited measure of liberalization, a system of

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[74] Official J. L.175, 23.07.1968, p. 1-12.

Community quotas. In October 1993, the original number of permits was raised to 30,000 for 1994, and it was agreed that this number would increase every year by 30 per cent as from 1995, until all-round liberalization of the market in 1998. Several aspects deserve comment. First, this belated agreement came after 1 January 1993 and its effect is delayed until 1998. Secondly, it will not achieve creation of the Single Market in road transport. Finally, it was only possible due to the aforementioned agreement between Member States on the various excise and duties which non-national Community carriers could be charged for the use of their infrastructures. The agreement also sought to harmonize the operating costs borne by the carriers from the various Member States so as to avoid unfair competition (thereby satisfying Germany's repeated request).[75]

As far as the pricing system on the transport market is concerned, tariff bands were commonplace from 1968 until very recently. They dictated the maximum and minimum levels between which tariffs for international goods transport had to be fixed. The tariffs would be negotiated between Member States and the Commission would arbitrate in case of dispute This system was abolished in January 1990, when pricing was liberalized.

The first steps towards the creation of a Community market in passenger transport were taken in March and July 1992. In fact only non-scheduled services in international traffic and certain services with accommodation include have been liberalized. Sceheduled services have not been liberalized. The opening-up of national markets is even more restricted for types of cabotage. As can be appreciated, advances towards liberalization in passenger markets have occurred very belatedly and cautiously. True liberalization has been considerably delayed.[76]

[75] Krononberger, Vincent.,Wouters, Jan., "The European Union and Conflict Preventetion : Policy and Legal Aspects", Cambridge University, Jan. 2005, p. 218-219.
[76] Stevens, Hnadley., "Transport Policy in the European Union" The European Union, March 2004, p.

Table 3.2 Motorway Density (lenght 'km' / surface (1000km^2))

	1998	1999	2000	2001	2002	2003		1998	1999	2000	2001	2002	2003
EU -25	13	13	14	14	:	:	Netherlands*	54	56	56	61	61	62
EU -15	15	16	16	16	:	:	Austria	19	19	19	20	20	20
Belgium	55	55	56	57	57	57	Poland	1	1	1	1	1	1
Czech Rep.	6	6	6	7	7	7	Portugal	14	16	16	18	20	22
Denmark	20	21	22	23	23	24	Slovenia	18	20	21	21	23	24
Germany	32	32	33	33	34	34	Slovakia	6	6	6	6	6	6
Estonia	2	2	2	2	2	:	Finland	1	2	2	2	2	2
Greece	3	3	5	6	:	:	Sweden	3	3	3	3	3	4
Spain	16	18	18	19	19	20	UK	14	15	15	15	15	15
France	17	18	18	18	19	19	Iceland						
Ireland	1	1	1	2	2	3	Liechtenstein						
Italy	21	21	21	21	21	21	Norway	0	0	0	0	1	1
Cyprus	22	23	26	28	29	29	Switzerland**	31	31	31	32	32	33
Latvia							Bulgaria	3	3	3	3	3	3
Lithuania	6	6	6	6	6	6	Crotia	:	:	7	8	8	10
Luxembourg	44	44	44	49	57	57	Romania	0	0	0	0	0	:
Hungary	5	5	5	5	6	6	Turkey	2	2	2	2	2	2
Malta													

3.4.1.1 Carriage of Goods by Road

Begining from 1 January 1993, a haulier established in a Member State of the Community may freely transport goods to another Member State. Whereas, until this date, such an operation would require special authorisation in application of bilateral agreements or Community quotas, from that date on, the right to conduct this business is based on quality conditions, which transport operators must observe and which entitle them to receive a Community transport licence.

Table 3.3 Good transported by Road (1000 million t-km)

	2002	2005		2002	2005
EU (25 Countries)	:	:	Netherlands	77	91
EU (15 Countries)	1115	:	Austria	38	37
Belgium	53	44	Poland	:	112
Czech Republic	44	43	Portugal	30	43
Denmark	23	23	Slovenia	7	11
Germany	285	310	Slovakia	:	23
Estonia	:	6	Finland	32	32
Greece	15	:	Sweden	37	39
Spain	185	233	UK	164	:
France	204	205	Bulgaria	:	:
Ireland	14	18	Croatia	:	:
Italy	193	:	Romania	:	:
Cyprus	1	1	Turkey		
Latvia	6	8	Iceland		
Lithuania	:	16	Liechtenstein	:	:
Luxemburg	9	:	Norway	10	18
Hungary	18	25	Switzerland	:	:
Malta	:	:			

However, such transnational activity must not result in serious disruption to the transport market and, for that reason, the Council has introduced a surveillance system offering a safeguard mechanism against market disruption.

However, in a single market a haulage operator should also be able to carry out transport in another Member State (cabotage). This natural progression has given rise to fears of distortion of competition and, for that reason, the system of cabotage has been introduced gradually since 1 July 1990 in the form of progressive Community quotas and was due to come into force on 1 July 1998.

Table 3.4 Tonnage of Freight Transport by Road (million tonnes)[77]

	1999	2000	2001	2002	2003	2004		1999	2000	2001	2002	2003	2004
EU -25	:	:	:	:	:	:	Netherlands	608	585	593	570	571	614
EU -15	11423	11687	11626	:	:	:	Austria	273	277	284	286	297	283
Belgium	323	412	386	392	378	347	Poland**	1068	1083	1072	1002	982	732
Czech Rep.	448	394	439	475	448	466	Portugal**	281	287	304	283	266	326
Denmark	216	224	205	209	206	192	Slovenia	47	49	58	63	69	74
Germany	3181	3003	2885	2721	2744	2768	Slovakia	151	197	196	174	174	178
Estonia	14	26	33	33	28	26	Finland	416	422	379	420	400	400
Greece	194	198	203	:	:	:	Sweden	306	329	311	326	312	329
Spain*	827	945	1048	1761	1850	2013	UK	1624	1648	1630	1691	1724	1832
France	1897	1924	1991	2037	1982	2077	Iceland	:	:	:	:	:	:
Ireland	162	192	201	223	252	278	Liechtenstein	:	:	:	:	:	:
Italy	1082	1205	1160	1254	1243	1424	Norway	226	222	219	216	230	244
Cyprus	:	:	:	52	55	43	Switzerland	:	:	:	:	:	:
Latvia	33	33	32	39	44	46	Bulgaria	:	122	115	140	155	145
Lithuania	46	45	45	45	52	51	Crotia	36	45	41	46	52	55
Luxembourg	33	37	45	51	52	53	Romania	279	263	268	267	276	:
Hungary	263	261	246	228	214	213	Turkey	:	:	:	:	:	:
Malta	:	:	:	:	:	:							

[77] Eurostat, EU energy, transport, and environment indicators, pocketbook, Data : 1990-2004
* Break in 2002: national transport includes goods transported inside the towns. ** Break in 2004 due to methodological changes

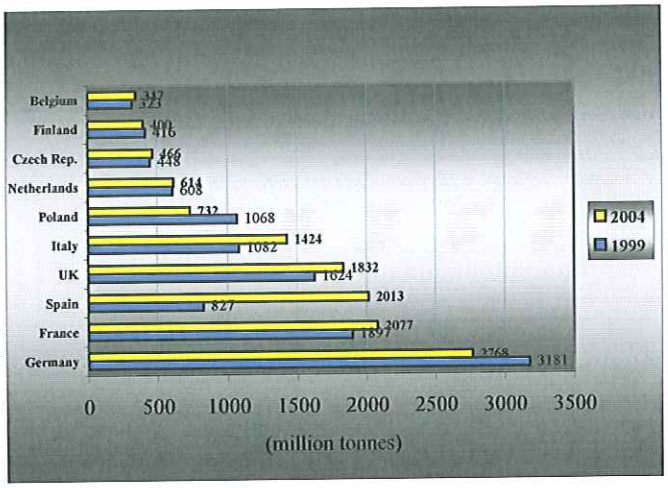

Figure 3. 4 Tonnage of Freight Transport by Road

3.4.1.2 Carriage of Passanger by Road

Though passenger services from one Member State to another were relatively free of constraints, the Community legislation made no provision for operators from one Member State to provide transport services in another Member State.

Table 3. 5 Passenger Transport by Buses and Coaches (passenger-km per inhabitant)[78]

	1998	1999	2000	2001	2002	2003		1998	1999	2000	2001	2002	2003
EU -25	1078	1081	1091	1093	1079	1086	Netherlands	497	474	471	474	446	462
EU -15	1079	1084	1095	1096	1086	1091	Austria	1819	1843	1852	1843	1835	1821
Belgium	1336	1349	1287	1309	1320	1320	Poland	880	860	821	802	762	785
Czech Rep.*	843	841	910	1036	947	926	Portugal	1140	1128	1156	1084	959	1006
Denmark	1717	1715	1710	1685	1669	1670	Slovenia	1956	2087	1761	1703	1674	1727
Germany	923	928	941	935	917	919	Slovakia	1640	1452	1565	1534	1531	1450
Estonia	1634	1616	192	1804	1715	1697	Finland	1514	1471	1488	1484	1481	1471
Greece	1957	1976	1988	2009	2031	2040	Sweden	1028	1050	1048	1079	1132	1172
Spain	1252	1262	1260	1284	1228	1188	UK**	760	773	787	790	793	790
France	726	710	730	698	677	713	Iceland	1671	1687	1750	1748	1753	1910
Ireland	1535	1571	1607	1620	1615	1627	Liechtenstein	:	:	:	:	:	:
Italy	1573	1599	1614	1651	1688	1694	Norway	950	936	922	909	909	877
Cyprus	:	:	:	:	:	:	Switzerland	432	429	426	426	:	:
Latvia	790	991	989	979	1010	1097	Bulgaria	1546	1795	1810	1892	2158	1662
Lithuania	835	756	787	814	869	897	Crotia	866	734	740	783	801	838
Luxembourg	2308	2300	2292	2286	2286	2289	Romania	398	370	343	320	242	434
Hungary	1673	1738	1834	1827	1840	1866	Turkey	1528	1429	1348	1118	1120	1128
Malta	:	:	:	:	:	:							

[78] EU energy, transport, and environment indicators, pocketbook, Data : 1990-2004. * break in series in 2000
** buses and coaches data refer to Great Britain

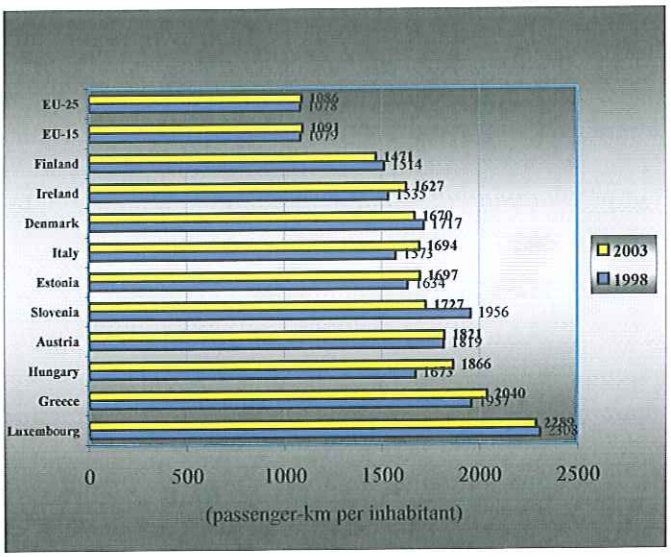

Figure 3. 5 Passenger Transport by Buses and Coaches

To apply the principle of the freedom to provide transport services, and following the Court of Justice's annulment of Regulation (EEC) 2454/92, the Council has adopted a new Regulation on cabotage . This Regulation defines the various types of passenger transport for which cabotage is possible and announces the liberalisation of special and occasional regular services and other regular services in June 1999.

To harmonise the conditions of competition for the carriage of goods and passengers by road, since the 1970s the Community has also taken a series of measures to harmonise the conditions for admission to the occupation of national and international road haulage operator and to allow effective freedom of establishment for such operators.

3.4.1.3 Road Safety

Ever greater mobility comes at a high price: each year accidents cause 40 000 deaths and 1 700 000 injuries on the roads. The direct and indirect cost has been estimated at EUR 160 billion, i.e. 2% of the EU's GNP.[79]

In order to improve road safety the Community has adopted a new action programme for road safety (2003-2010). At the same time the European Road Safety Charter aims to promote more effective measures for reducing road accidents in Europe. The target is, by 2010, to reduce the number of fatalities by 50%.[80]

[79] EU energy, transport, and environment indicators, pocketbook, Data : 1990-2004.
[80] EU energy, transport, and environment indicators, pocketbook, Data : 1990-2004.

3.4.2 Rail Transport

For almost thirty years there has been a worrying decline in rail transport in Europe, particularly as regards freight. In 1970 almost 21% of goods in the EU were transported by rail. By 2000 the figure was 8.1%. The main reason for this state of affairs is that the railways are not as competitive as road haulage.[81]

Table 3.6 Railway Density (length 'km' / surface (1000km^2))[82]

	1998	1999	2000	2001	2002	2003		1998	1999	2000	2001	2002	2003
EU -25	52	52	52	51	51	51	Netherlands	68	68	68	69	68	69
EU -15	49	49	48	48	48	48	Austria	67	67	66	71	67	68
Belgium	144	114	114	113	115	115	Poland	74	73	72	68	67	66
Czech Rep.	120	120	120	121	122	122	Portugal	30	31	31	31	30	31
Denmark	53	64	64	64	64	65	Slovenia	59	59	59	61	61	61
Germany	107	105	102	101	100	101	Slovakia	75	75	75	75	75	75
Estonia	21	21	21	21	21	21	Finland	17	17	17	17	17	17
Greece	17	17	18	18	18	18	Sweden	24	25	25	24	25	25
Spain	32	32	32	32	33	33	UK	70	70	70	70	70	69
France	58	58	57	57	57	56	Iceland						
Ireland	27	27	27	27	27	27	Liechtenstein*	119	119	119	119	119	119
Italy	53	53	53	53	53	54	Norway	12	12	13	13	13	13
Cyprus							Switzerland	122	123	123	122	122	122
Latvia	37	38	36	36	35	35	Bulgaria	39	39	39	39	39	39
Lithuania	31	29	29	26	27	27	Crotia	48	48	48	48	48	48
Luxembourg	106	106	106	106	106	106	Romania	46	46	46	46	46	46
Hungary	82	82	82	83	83	83	Turkey	11	11	11	11	11	11
Malta													

The EU wishes to make it easier for the Community's railways to adapt to the demands of the single market and to make them more efficient. To help achieve this, it has proposed introducing an operating licence to provide uniform access to infrastructure and has established a system for ensuring that infrastructure capacity is allocated on a non-discriminatory basis and that users pay the full real cost of the facilities they use.

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[81] Gomez, A., Jose., R., Gines and Ibanez, "Competition in the Railway Industry: An International Comparative Analysis", Transport Economics, Management and Policy, Dec. 2006, p. 69.

[82] Eurostat, EU energy, transport, and environment indicators, pocketbook, Data : 1990-2004. * The 19 km railways in Liechtenstein are operated by the Austrian railways.

Figure 3. 6 Speedy Train

In its White Paper of July 1996 the Commission set out a strategy to revitalise the Community's railways, notably by rationalising their financial situation, ensuring freedom of access to all traffic and public services and promoting the integration of national systems and social aspects.[83]

Table 3.7 Total length of railway lines (km)

	1995	2003		1995	2003		1995	2003
EU -25	213093	197826	Cyprus			Finland	5859	5851
EU -15	161743	150476	Latvia	2413	2269	Sweden	10925	9882
Belgium	3368	3521	Lithuania	2002	1774	UK	16999	17052
Czech Rep.	9430	9612	Luxembourg	275	275	Iceland		
Denmark	2349	2273	Hungary	7632	7950	Liechtenstein	9	9
Germany	41718	36054	Malta			Norway	4023	4077
Estonia	1021	959	Netherlands	2813	2812	Switzerland	5041	5159
Greece	2474	2414	Austria	5672	5661	Bulgaria	4293	4318
Spain	16336	14387	Poland	23986	19900	Croatia	2726	2726
France	31940	29261	Portugal	3065	2818	Romania	11376	11364
Ireland	1945	1919	Slovenia	1201	1229	Turkey	8549	8697
Italy	16005	16288	Slovakia	3665	3657			

In 2001, the "infrastructure package" was presented with the aim of opening up rail freight markets, by establishing a framework for the conditions of access to national networks for rail companies. In 2002, the Commission proposed a new package of measures aimed at revitalising the railways through the rapid construction of an integrated railway area in Europe.

[83] Stevens, Handley., "Transport Policy in the European Union" The European Union, March 2004, p. 154.

Table 3.8 Tonnage of Freight Transport by Rail (million tonnes)[84]

	1999	2000	2001	2002	2003	2004		1999	2000	2001	2002	2003	2004
EU -25*	1397	1462	1416	1473	1517	1646	Netherlands	27	28	26	26	30	30
EU -15*	890	930	917	903	913	987	Austria	74	81	83	84	82	95
Belgium	59	61	57	57	56	58	Poland	185	185	167	223	242	283
Czech Rep.	91	98	97	92	93	89	Portugal	9	9	10	11	9	10
Denmark	7	8	7	7	8	8	Slovenia	13	14	14	15	17	18
Germany	277	283	288	285	297	310	Slovakia	49	54	54	50	51	50
Estonia	58	64	65	71	66	66	Finland	40	41	42	42	44	43
Greece	2	3	3	2	3	3	Sweden	46	52	55	55	58	60
Spain	25	26	26	26	26	29	UK	92	95	94	87	89	119
France	137	142	126	128	121	117	Iceland						
Ireland	3	3	3	2	2	2	Liechtenstein	:	:	:	:	:	2
Italy	74	80	79	75	74	86	Norway**	8	8	8	20	21	23
Cyprus							Switzerland	55	59	59	55	:	:
Latvia	33	36	38	40	49	56	Bulgaria	21	21	19	19	20	20
Lithuania	28	31	29	37	43	46	Crotia	10	10	11	11	12	12
Luxembourg	18	18	18	16	15	17	Romania	63	71	72	68	69	63
Hungary	49	50	36	43	43	52	Turkey	15	18	14	14	16	18
Malta													

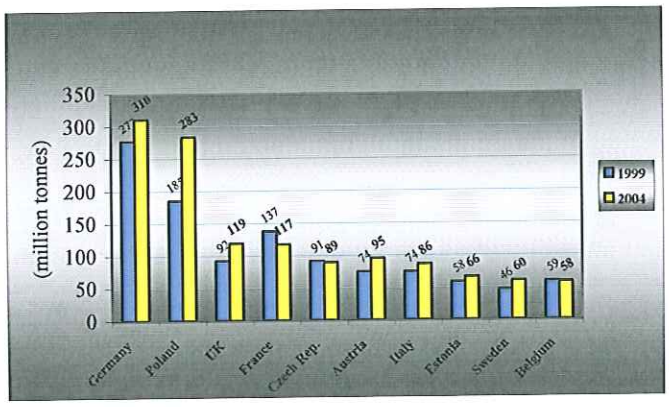

Figure 3. 7 Tonnage of Freight Transport by Rail

Railways did not appear to provide a solid foundation for integration and liberazliation at a Community level since a real international rail transport markets did not de facto exist, there being merely a juxtaposition or national markets in which the railways companies exercised a dejure monopoly. European railways, with their governments' international support, and their own private mechanisms of co-ordination (such as the Internaional

[84] EU energy, transport, and environment indicators, pocketbook, Data : 1990-2004. * the values of this table include national, international incoming and outgoing and transit rail transport of each country. In consequence,some volumes are calculated twice or even three times. ** break in series: two companies are included since 2002.

Railway Union, UIC, or the Community of European Railways) appeared impermeable to Community initiatives. Intervention nevertheless became necessary eleven years after the entry into force of the Treaty. With the object of curbing the enormous deficit accumulated by railway companies, in 1969 the Council adopted certain common rules for the normalization of the accounts of railway undertakings and provisions relating to Member State action with regard to public service obligations. These texts and others aim to improve the transparency of economic benefits granted by Member States to their railways by creating clear accounting procedures and to ensure that the railways receive an equitable reward for public jervice contributions.

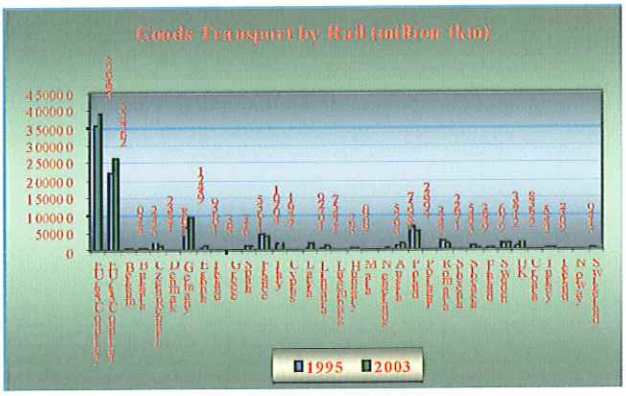

Figure 3. 8 Goods Transport by Rail (million t-km)

Table 3.9 Passenger Transport by Rail (passenger-km per inhabitant)[85]

	1999	2000	2001	2002	2003	2004		1999	2000	2001	2002	2003	2004
EU -25	750	777	782	773	758	766	Netherlands*	949	967	966	960	851	826
EU -15	784	808	818	813	798	810	Austria	1001	1024	1026	1031	1018	1061
Belgium	719	756	781	799	796	832	Poland	557	623	582	540	514	483
Czech Rep.	676	707	713	646	635	645	Portugal	431	375	379	379	343	352
Denmark	998	1037	1068	1069	1081	881	Slovenia	314	411	359	376	390	382
Germany	899	917	920	865	864	883	Slovakia	550	533	521	499	431	414
Estonia	173	192	133	130	134	143	Finland	661	658	633	638	640	640
Greece	145	173	159	167	143	154	Sweden	872	936	989	1020	1049	961
Spain	458	465	477	478	465	476	UK	651	643	661	674	681	721
France	1131	1181	1203	1231	1201	1230	Iceland						
Ireland	388	365	392	414	401	389	Liechtenstein**	:	:	:	:	:	:
Italy	753	816	814	804	786	783	Norway	652	636	612	549	530	572
Cyprus							Switzerland	1766	1782	1867	1661	:	:
Latvia	412	301	300	318	328	351	Bulgaria	465	431	378	330	322	338
Lithuania	211	175	153	144	125	129	Crotia	206	221	279	269	262	273
Luxembourg	720	761	783	800	582	589	Romania	548	518	495	390	391	398
Hungary	929	949	982	1037	1015	1044	Turkey	96	90	981	75	83	74
Malta													

[85] EU energy, transport, and environment indicators, pocketbook, Data : 1990-2004. * Up to 2002, rail data are based on the movements of the Dutch inhabitants on Dutch territory. ** Rail transport data are included

The most important advance in the EC railway policy took place in 1991 with the adoption of Council Directive 91/440/EEC,[86] on the development of European railways. The objective of the Directive is to help EC railway companies adapt to the Single Market and increase their efficiency, by granting them management independent of the State; separating management of railway operaition and infrastructure from the provision of transport services; improving the economic structure of undertakings and permitting access to the Member States' national networks by international groups of railway undertakings and by railway undertakings engaged in combined international transport.

The promotion of the combined transport of goods is precisely one of the CTP's objectives in the inland sector. Various Community measures have been targeted at the promotion of

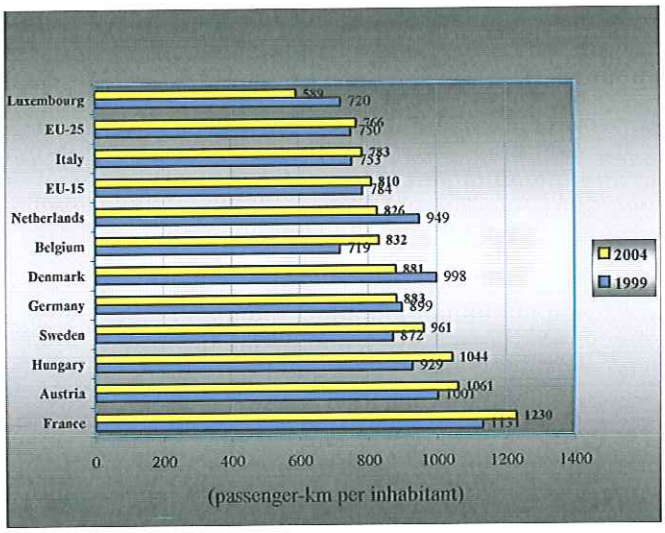

Figure 3. 9 Passenger Transport by Rail

combined transport since 1975 when it was agreed to free it from the quota system, on condition that maximum use was made of rail, and that transport units (containers, trailers, semi-trailers) were loaded and unloaded at the railway stations closest to the points of origin and destination.

Another of the Community priorities in the railway sector is the creation of a high-speed railway network, with the aim of uniting the main European capitals in the 21st century. This calls for the co-ordinated effort of all the Member States to meet the substantial investments in the infrastructures required.

[86] Official J. L.237, 24.08.1991, p.25-28.

3.4.3 Inland Waterway Transport

Inland waterways play an important part in the transport of goods in Europe. Over 35 000 km of waterways link hundred of towns and areas of industrial concentration. Since 1 January 1993, inland waterway transport has also benefited from the liberalisation of cabotage , the main effect of which has been the end of the rota system which prevented companies employing these services from having a free choice of carrier.[87]

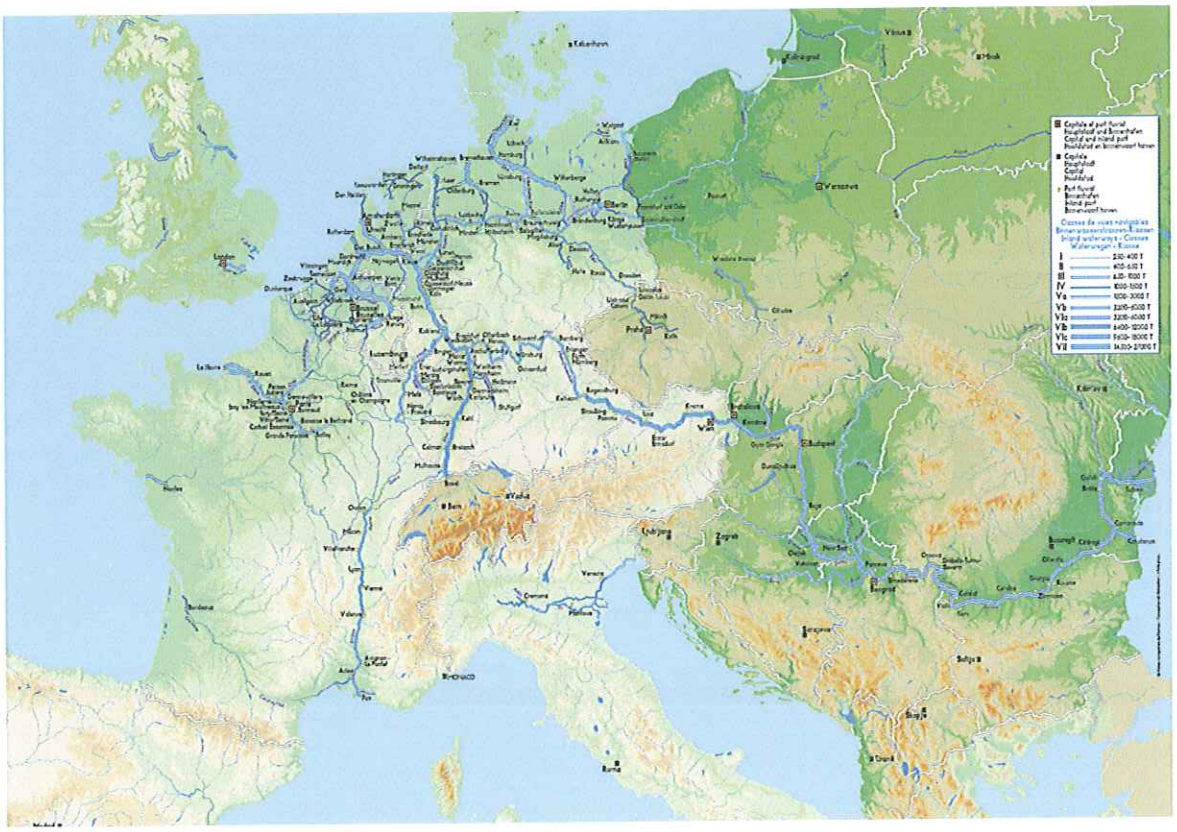

Figure 3. 10 European Waterways

[87] Stevens, Handley., "Transport Policy in the European Union" The European Union, March 2004, p. 182.

Table 3.10 Inland Waterway Density (lenght 'km' / surface(1000km^2))

	1998	1999	2000	2001	2002	2003		1998	1999	2000	2001	2002	2003
EU -25	9	9	9	9	9	9	Netherlands	123	123	123	123	123	123
EU -15	9	9	9	9	9	9	Austria	4	4	4	4	4	4
Belgium	50	50	50	50	50	50	Poland	12	12	12	12	12	12
Czech Rep.	8	8	8	8	8	8	Portugal	1	1	1	1	1	1
Denmark							Slovenia						
Germany	19	19	19	19	19	19	Slovakia	4	4	4	4	4	4
Estonia	7	7	7	7	7	7	Finland	23	23	23	23	23	23
Greece	0	0	0	0	0	0	Sweden	1	1	1	1	1	1
Spain	0	0	0	0	0	0	UK	5	5	5	5	5	4
France	10	10	11	10	10	10	Iceland						
Ireland							Liechtenstein						
Italy	5	5	5	5	5	5	Norway						
Cyprus							Switzerland	18	18	18	18	18	18
Latvia							Bulgaria	4	4	4	4	4	4
Lithuania	6	6	6	7	7	4	Crotia	13	13	13	13	13	13
Luxembourg	14	14	14	14	14	14	Romania	7	7	7	7	7	7
Hungary	15	15	15	15	15	15	Turkey						
Malta													

The main inland waterway transport market problems in the Community relate to the excess and fragmentation of supply. Community policy has been to try to eliminate capacity surpluses, and to carry through the re-conversion of the sector which involves numerous independent waterway carriers and small-business undertakings. Community action has been restricted by the existence of the Mannheim Convention which, since 1868, has regulated navigation conditions on the Rhine. The Convention introduced total freedom of navigation on the North European trade artery, in whose waters two-thirds of the total Community inland waterway traffic is carried. Another obstacle to the development of an inland waterway Common Transport Policy has been the opposition of die Netherlands to Community initiatives. This country did not want to change the organization of a market which has been highly favourable to the interests of the Port of Rotterdam and Dutch carriers, undoubtedly the most powerful in Europe.

Table 3.11 Tonnage of Freight transport by inland waterway (million tonnes)[88]

	1999	2000	2001	2002	2003	2004		1999	2000	2001	2002	2003	2004
EU -25*		792	808	788	756	:	Netherlands	311	314	329	312	293	319
EU -15*	741	774	789	770	738	:	Austria	10	11	12	12	11	9
Belgium	110	120	128	134	137	147	Poland**	8	10	10	7	8	7
Czech Rep.	2	2	2	2	1	1	Portugal						
Denmark							Slovenia						
Germany	229	242	236	232	220	236	Slovakia**	2	2	2	1	3	3
Estonia	:	:					Finland	0	1	0	0	0	:
Greece							Sweden						
Spain							UK	4	4	4	4	3	:
France	66	71	68	67	64	67	Iceland						
Ireland							Liechtenstein						
Italy	:	:	:	:	:	:	Norway						
Cyprus							Switzerland	:	:	:	:	:	:
Latvia							Bulgaria	:	:	6	6	7	4
Lithuania**	0	0	0				Crotia	1	1	2	1	1	2
Luxembourg	11	12	11	9	10	11	Romania**	14	13	11	14	:	30
Hungary	:	4	6	7	6	7	Turkey						
Malta													

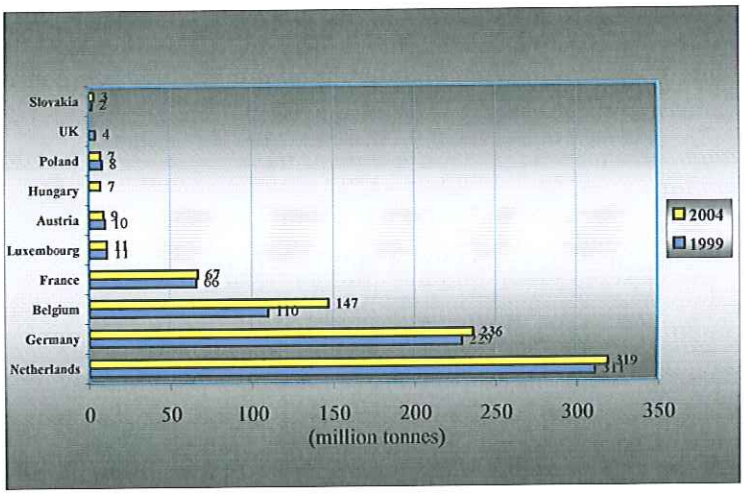

Figure 3. 11 Tonnage of freight transport by inland waterways

In 1989, the Commission managed to persuade the Council to address structural reform and the liberalization of the inland waterway transport market. In April 1989, the Council decided to adopt measures for the restructuring of the sector with an eye to reducing the surplus capacity by means of a scrapping process co-ordinated at a Community level.

[88] EU energy, transport, and environment indicators, pocketbook, Data : 1990-2004. * EU totalsexclude Italy and Estonia ** Inland waterways operators data are reported for : LT, PL (up to 2003), SK (up to 2002), RO (up to 2003) and HR.

This was done through the establishment of specific bonuses and an 'old-for-new' replacement system which makes the commissioning of new barges contingent on the scrapping of an equivalent cargo capacity or on the payment of a special fee. The object is to deter carriers from increasing their capacity.[89]

In December 1991, the Council finally agreed on a regulation fixing the conditions of non-resident carriers' access to national inland waterway markets of the Community and resolved the outstanding issue of the right of cabotage of Community carriers in any Community country. This system entered into for in January 1993, with certain exceptions in place until 1995.

3.4.3.1 Development of the Inland Common Transport Policy

It has taken thirty years to reach the first agreements on the liberalization of the transport market on a Community scale, and some agreements still have to be reached before the Single Market becomes a reality in Jome specific sectors.Such immobility in such a dynamic sector is surprising. The lack of the CTP's thrust in transport is due both to the great differences between the governing legislation of the Member States and to the importance of the interests at stake. The first attempt to create an overall policy for inland transport goes back to 1983 when the Commission presented to the Council its Memorandum on inland transport, the first of a series of three relating to the different modes of transport.

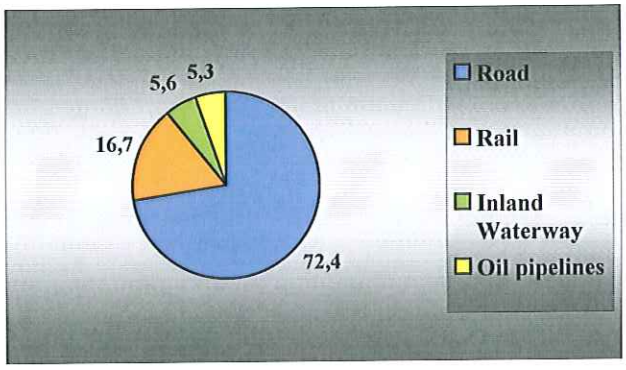

Figure 3. 12 Transport of goods, by selected type of inland transport, EU-15, 2004 (% based on data in million t-km)

[89] John, F. L. Ross., "Linking Europe : Transport Policies and Politics in the European Union", Feb. 1998, p. 61.

3.4.4 Trans – European Networks

In December 1992 the Commission presented a White Paper on the "Future development of the common transport policy", in which it undertook to promote trans-European transport networks (TENs), by encouraging links between the Member States' networks (interconnection) and national network interoperability, while at the same time taking account of environmental constraints.

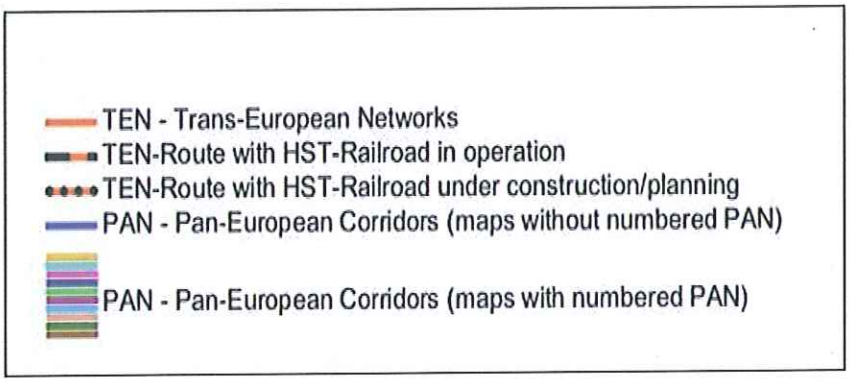

Figure 3. 13 Legend to the European maps of TEN – PAN

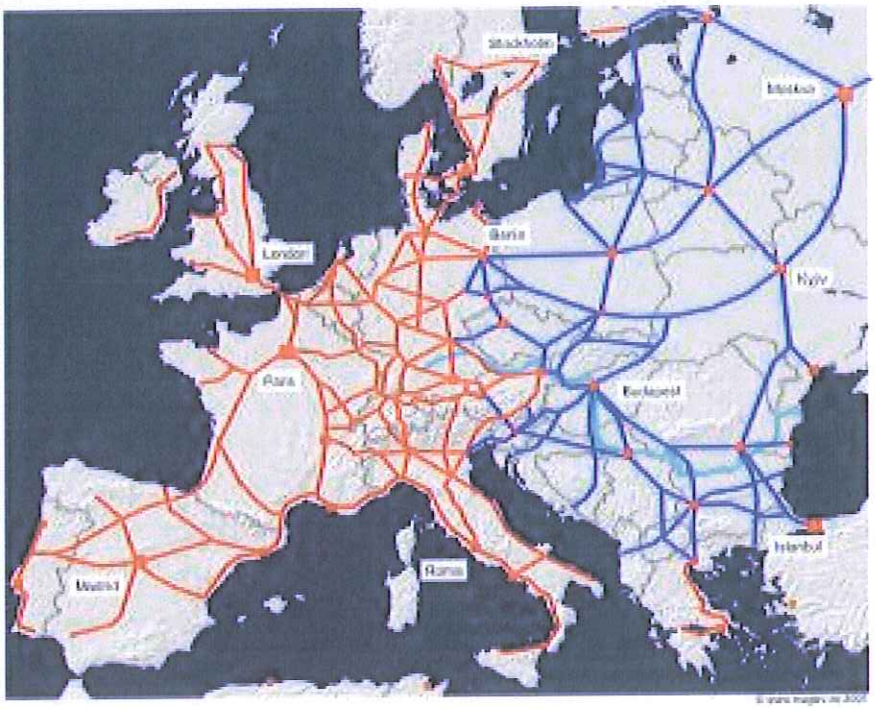

Figure 3. 14 General map of the Pan-European corridors

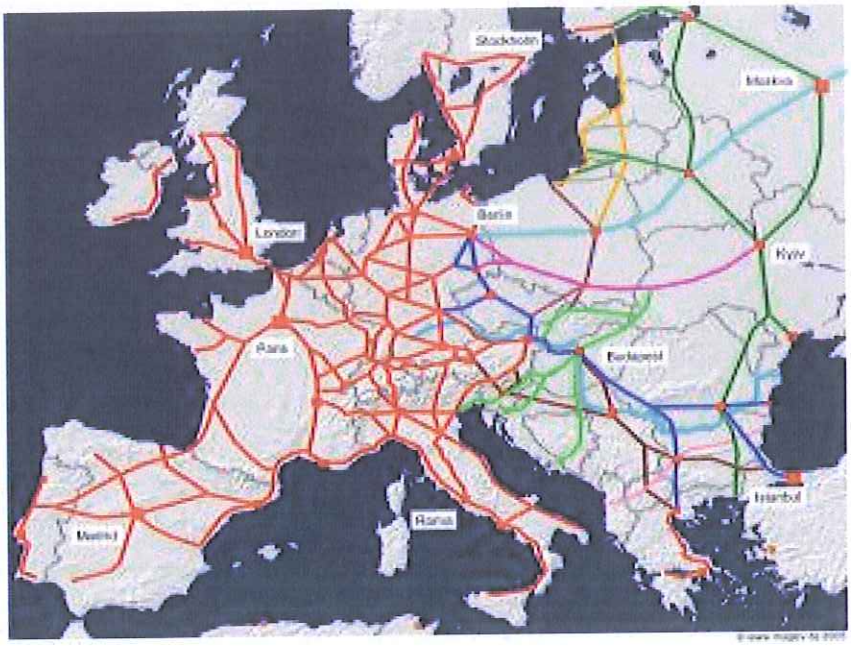

Figure 3. 15 General map of the Trans-European Networks and Pan-European corridors

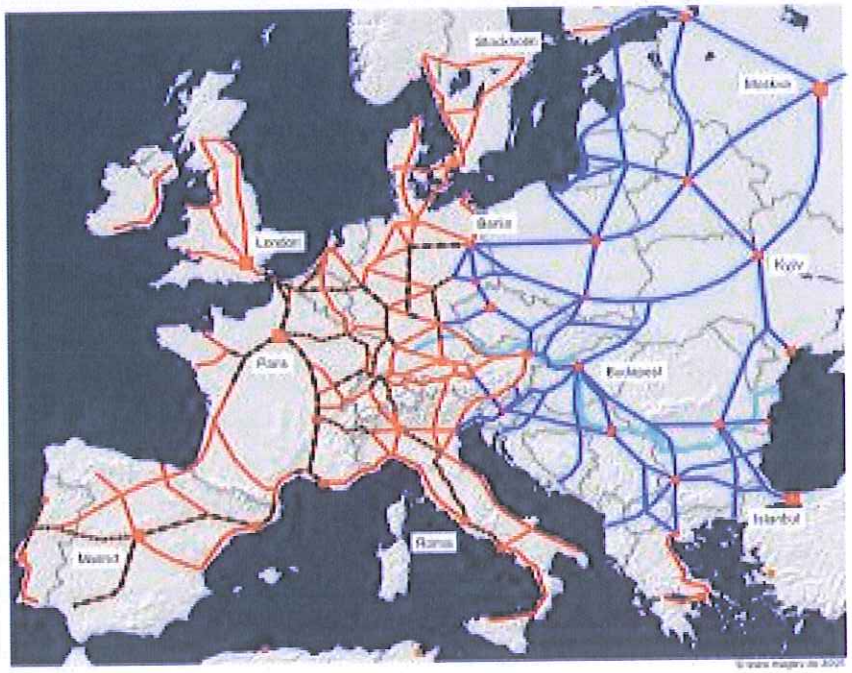

Figure 3. 16 General map of the Trans-European Networks (with High Speed Ground Transport-Railroad corridors) and the Pan-European corridors

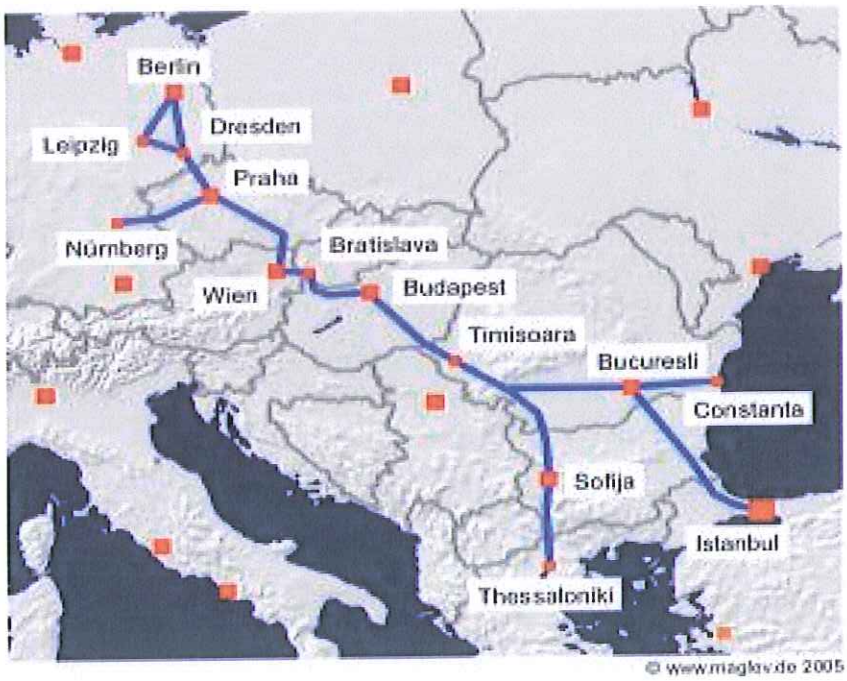

Figure 3. 17 Map of the Pan-European Corridor No. IV . The Corridor IV Project is considered a key project to the cross-linking of Eastern Europe in the European Union

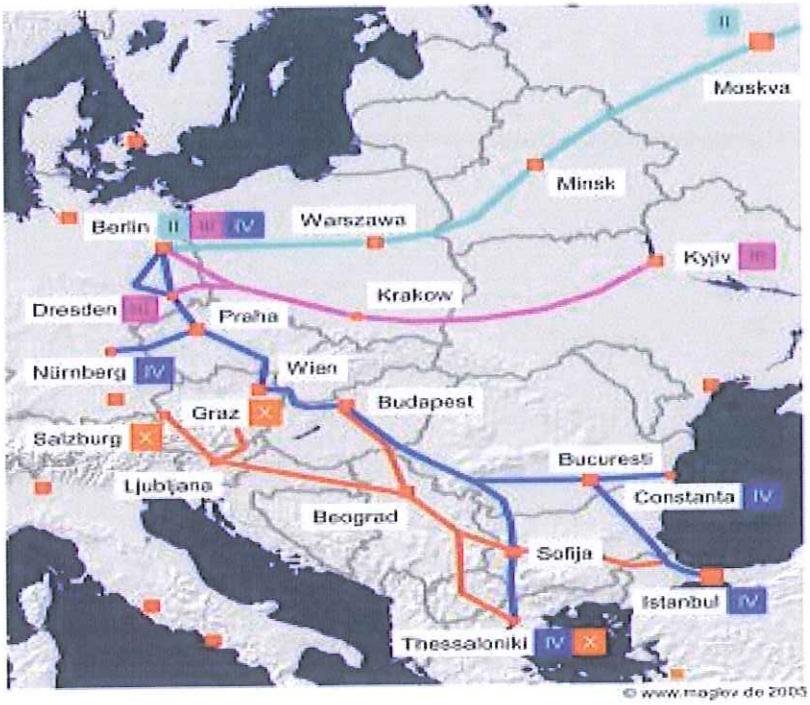

Figure 3. 18 Map of the Pan-European Corridors No. II, III, IV and X

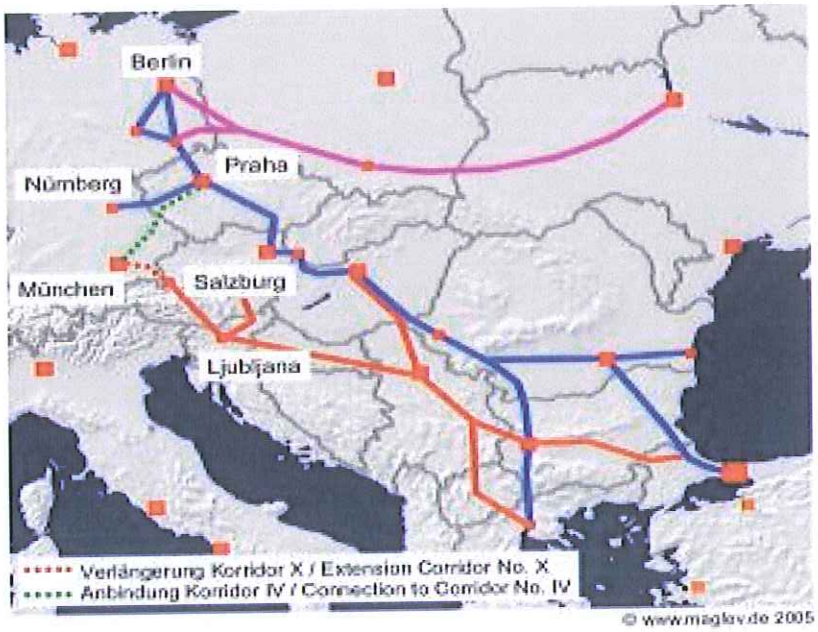

Figure 3. 19 Map of a possible High Speed Transport link between Munich and the Pan-European Corridors No. IV and X

The European Commission has drawn up a new list of thirty priority projects which should start before 2010 and whose total estimated cost is EUR 225 billion. The list establishes more sustainable mobility plans by concentrating investment in rail and waterway transport.[90]

3.4.4.1 Infrastructures and Trans – European Networks

In terms of infrastructure, the bulk of Community efforts logically concentrated on the infrastructures of inland transport in its various forms. The attention paid to seaports and airports has also been significant and important but, in economic terms, the investments made in them represent a far lower percentage than that devoted to inland transport infrastructures.

In the 1980s, and despite increasing demand for transport, investments in transport infrastructures in Europe, expressed as a percentage of the GDP, fell to the present figure of 1 per cent. In 1989, investments in infrastructures for road transport accounted for

[90] John, F. L. Ross., "Linking Europe : Transport Policies and Politics in the European Union", Feb. 1998, p. 189.

around 66 percent of the total, investments for rail transport 23 percent, investments relating to inland waterways 1.5 percent, sea ports 3.5 percent and airports 5.6 percent.[91]

The increase in the demand for transport and the relative fall in investment in infrastructure has put major pressure on the capacity of road and railway netwoks, which have at some levels reached saturation point. Not even increases in investment in airports (from 2.9 percent of the total in 1980 to 5.6 percent in 1989) have been sufficient to put an end to airport congestion; however, this is also due in part to the rather unsatisfactory air control mechanisms in Europe.[92]

The Commission's interest in infrastructures dates from its 1961 Memoradum on the general tack of transport policy. Following a difficult initial period, during which Member States showed little enthusiasm to collaborate in a co-ordination procedure which had been set up in 1969, the Council accepted in 1978 the Commission's 1976 proposal for the creation of an Infrastructures Committee. Even before this, the Commission had presented proposals to the Council for the Community-wide adoption of measures for the planning, financing and charging of utilization costs of infrastructures.

The first Community action regarding infrastructure planning took shape belatedly. First, at the end of 1990, a rail network for high-speed trains was devised. Subsequently—pursuant to Articles 129B and 129C of the EC treaty—a regulation and three decisions relating to the establishment of Trans European networks for combined transport, motorways, and inland waterways were adopted.

The Commission has always been in favour of granting economic support to projects with Community interest and of creating a specific permanent instrument for this purpose. Since the mid-1970s, the Commission has presented various proposals to the Council resulting in several programmes for the financing of short-term and medium-term infrastructures. Additionally, in November 1990, the Council established an action programme for the transport infrastructure. Aside from this specific programme, the Cohesion Funds—created for Greece, Spain, Ireland, and Portugal under Article 130D of the EC Treaty, as a result of the entry into force of the Treaty on European Union

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[91] John, F. L. Ross., "Linking Europe : Transport Policies and Politics in the European Union", Feb. 1998, p. 191.

[92] John, F. L. Ross., "Linking Europe : Transport Policies and Politics in the European Union", Feb. 1998, p. 192.

(TEU)—and the European Development Fund (FEDER) will ajso be used to finance infastructure projects.[93]

The thorniest problem for the liberalization of road transport, charging for costs of using infrastructures, has only been resolved recently, and then only partially. The Commission continues to gear its proposals towards resolution this problem.

3.4.4.2 Satelite Navigation

Galileo is a satellite radio navigation system launched by the EU and the European Space Agency (ESA). The programme is based on a constellation of thirty satellites and a network of earth stations enabling positioning information to besupplied to users in various sectors, such as transport (vehicle location, route finding, speed control, etc.), social services (assistance for disabled and elderly persons), justice and customs (border controls) and public works.

3.4.5 Maritime Transport

More than 90% of the EU's external trade and some 43% of its internal trade is transported by sea; in total, over 1 billion tonnes of freight are loaded and unloaded at European ports each year.[94]

International maritime transport is, by definition, a liberalised activity. If it were not, nobody would benefit from the role this mode of transport plays in international trade. However, it is only since 1 January 1993 that cabotage by sea has started to be phased in, as agreed in 1992.[95]

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[93] Johson, Debra., Turner, Colin., "Strategy and Policy for Trans-European Networks", Aug. 2007, p. 20.
[94] Selkou E., Roe M., "Globalisation , Policy and Shipping: Fordism, Post-Fordism and The European Maritime Sector (Transport Economics, Management and Policy Series), 2004, p. 36.
[95] Pallis, A. Athanasios., "The Common EU Maritime Transport Policy : Policy Europeanisation in the 1990s, (Transport and Mobility), Feb. 2002, p. 74.

The introduction of cabotage and the need for the Community to help improve the conditions for international maritime transport have resulted in the adoption of measures relating to competition policy, to the prevention of unfair pricing practices, to standards for ships engaged in the transport of dangerous goods and to working conditions . The conditions governing admission to the occupation have also been defined.

In its communication of 13 March 1996, approved by the Council on 13 December of the same year, the Commission reiterated the three priorities in the development of maritime policies: safety, maintenance of open markets and enhanced competitiveness.

3.4.5.1 Safety at Sea

On the question of maritime safety, the sinking of the ERIKA in December 1999, followed by the PRESTIGE in November 2002, prompted new measures in the process of establishing European policy on maritime safety, aimed in particular at the environmental risks caused by oil tankers. Two series of legislative proposals have been put forward by the Commission, Erika I (March 2000) and Erika II (December 2000), whose objectives are to improve safety on ships and protect the environment.[96]

The measures proposed cover the following: more rigorous inspections in ports, ban on single hull tankers, establishment of a Community monitoring , inspection and information system for maritime traffic, establishment of a compensation fund for oil pollution damage, and the setting up of a European Maritime Safety Agency .

3.4.6 Air Transport

Of all modes of transport, air transport is by far the one that has grown the most in the EU over the last twenty years. However, the boom in air transport is exacerbating the problems of airport saturation and air traffic control system overload.

The Community policy on liberalising air transport covers four main areas: market access, capacity control, fares and the issue of operating licences for companies. It was launched in 1980 and has been implemented in three stages, with Stage 3, the third air transport package, coming into force on 1 January 1993. A transitional period was laid down for air cabotage, which became reality only on 1 April 1997.[97]

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[96] J. Mcconville, "International Maritime Transport : Perspectives (Routledge Advances in Maritime Studies), 2004, p. 114.

[97] Stevens, Hnadley., "Transport Policy in the European Union" The European Union, March 2004, p. 145.

The cornerstones of this process are:

- the introduction of a single air transport licence issued to air transport undertakings established in the Community;
- conditions for access to routes within the Community for air carriers;
- passenger fares including ways for the Commission to intervene directly in case of unfair pricing (predatory practices);
- freight services.

Table 3.12 International passenger transport by air (passengers per thousand inhabitants)[98]

	1999	2000	2001	2002	2003	2004
EU -25(1)	1298	1398	:	:	:	1592
EU -15	1491	1603	:	:	1655	1807
Belgium	1956	2106	1923	1385	1454	1676
Czech Rep.(2)	480	554	610	632	745	957
Denmark	3019	3204	3358	3394	3333	3589
Germany	1120	1199	1181	1139	1211	1387
Estonia(2)	398	408	417	434	513	722
Greece	2060	2253	:	:	2104	2171
Spain	1922	2031	2068	2042	2142	2243
France	1029	1113	1112	1153	1161	1259
Ireland	3909	4217	4310	4470	4804	4957
Italy	676	767	756	747	858	980
Cyprus(6)	7959	8687	9144	8499	8408	8679
Latvia(2)	236	243	265	271	306	457
Lithuania	154	16	187	202	209	289
Luxembourg	3656	3795	3664	3374	3220	3329
Hungary	422	460	451	440	495	638
Malta	7869	7789	7139	6547	6533	6859
Netherlands	2357	2538	2456	2516	2528	2726
Austria	1661	1775	1761	1790	1882	2170
Poland	112	122	129	132	:	136
Portugal	1219	1310	1294	1394	1426	1521
Slovenia	462	509	455	444	:	524
Slovakia(4)	29	27	35	86	110	194
Finland	1344	1468	1485	1448	1499	1707
Sweden	1716	1836	1818	1635	1514	1633
UK	2243	2390	2391	2467	2580	2782
Iceland	3451	3827	3611	3405	:	:
Liechtenstein						
Norway	1662	1832	1857	1725	1762	1881
Switzerland	3990	4364	4080	3342	3383	3494
Bulgaria(3)	260	260	323	380	:	:
Crotia(7)	258	332	368	408	459	547
Romania	80	92	113	103	117	138
Turkey(5)	267	334	343	357	355	447

[98] Eurostat, national statistics. **(1)** Passenger traveling between 2 countries are counted twice in the aggregate EU-25. **(2)** CZ, EE, LV: upto 2001, air passenger data include transit. **(3)** BG: upto 2001, only public sector enterprises.Including transit for 1995-1999. **(4)** SK: upto 2001, data consist only of transport enterprises enrolled in Business register with 20 and more employees. **(5)** TR: upto 2001, no of departures and arrivals in external lines reported to the General Directorate of State Airports. **(6)** CY: Excluding transfer passengers. **(7)** Excluding direct transit passengers.

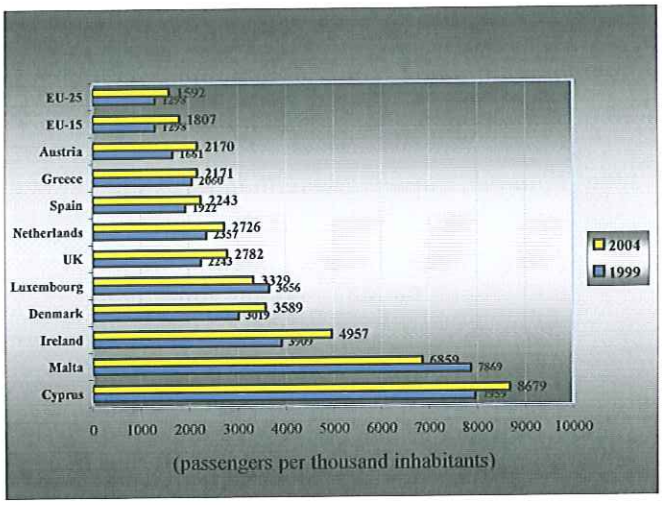

Figure 3. 20 International passenger transport by Air

As liberalisation leads to the creation of a genuine single market for air transport, the Community has harmonised many rules and Regulations to create a level playing field for all airlines. In particular it has laid down technical standards and administrative procedures for fixing common standards for the airworthiness of aircraft, and has legislated on the mutual recognition of licences for people working in the civil aviation industry, allowing pilots to be recruited directly from any Member State.

The Community has also laid down the procedures for applying competition rules to air carriers and to various types of agreement and concerted practice. Lastly, it has adopted a Directive on access to the airport ground services market.

3.4.6.1 Development of the Air Common Transport Policy

In the thirty years which followed the entry into force of the Treaty of Rome, air transport was organized, in a similar way to inland transport, on the basis of the public regulation of conditions of competition, rather than on the free market. The Governments controlled, unilaterally or bilaterally, access to the mar-et (authorizing or otherwise new air carriers to operate at their airports), the available transport capacity on the routes (determining the frequency of flights and even the type of aircraft), the distribution of such capacity between the airlines (typically, by halves -for national carriers on each route) and tariffs (fixing the prices which the users would have to pay). Also, certain international organizations such as the International Air Transport Association (IATA) set about

introducing even more restrictions on the commercial freedom of air transport undertakings.[99]

Table 3.13 Number of main commercial Airports (Commercial Airports with more than 150 000 passenger units movements * per year[100]

	2004		2004		2004
EU -25	260	Cyprus	2	Finland	11
EU -15	242	Latvia	1	Sweden	19
Belgium	4	Lithuania	1	UK	32
Czech Rep.	3	Luxembourg	1	Iceland	3
Denmark	6	Hungary	1	Liechtenstein	
Germany	25	Malta	1	Norway	16
Estonia	1	Netherlands	4	Switzerland	3
Greece	18	Austria	6	Bulgaria	3
Spain	33	Poland	6	Crotia	3
France	39	Portugal	8	Romania	3
Ireland	6	Slovenia	1	Turkey	14
Italy	30	Slovakia	1		

As a consequence, Community air transport has been characterized by the existence of virtual national monopolies, market sharing and very high tariffs. This system has not produced advantages for consumers and perhaps not even for the airlines themselves, the economic efficiency of which is likely to have been affected by so many years of regulation.

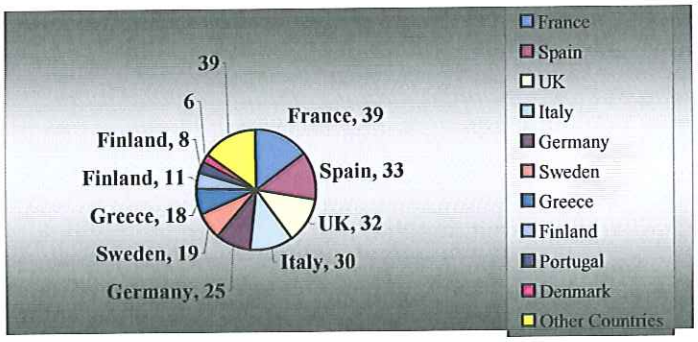

Figure 3. 21 Number of main commercial Airports, 2004 (EU-25 Top Ten Countries)

Compared with the United States system, the European air system is characterized, like the rail system, by the dearth of private companies and the proliferation of public corporations which receive considerable sums of money as State subsidies to support their commercial viability.

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[99] Stevens, Hnadley., "Transport Policy in the European Union" The European Union, March 2004, p. 150.
[100] Eurostat, national statistics. * One passenger unit is equivalent to either one passenger or 100 kg of freight and mail

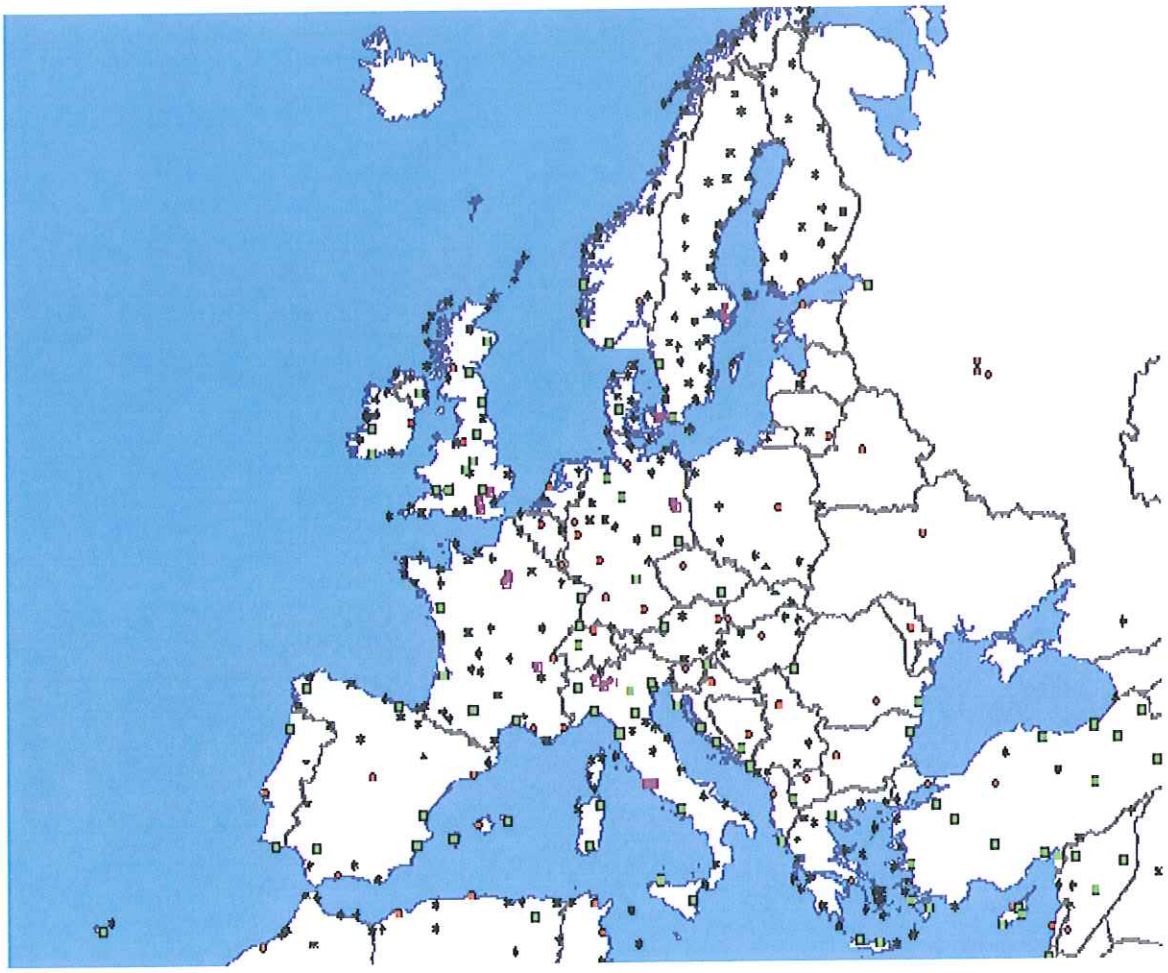

Figure 3. 22 Airports of Europe

3.4.6.2 The Single European Sky

The Commission has adopted a set of proposals on air traffic management aimed at creating a 'single European sky'. The single European sky is an ambitious initiative to reform the way European air traffic control is structured with a view to meeting future capacity and safety requirements. This package sets out the objectives and the operating principles based on six lines of action: joint management of airspace, establishment of a strong Community regulator, gradual integration of civil and military management, institutional synergy between the EU and Eurocontrol , introduction of appropriate modern technology and better coordination of human resources policy in the air traffic control sector.[101]

[101] Cook, Andrew., "European Air Traffic Management : Principles, Practice and Research", Dec. 2007, p. 79.

As regards passengers' rights, the new legislation which entered into force in 2005 increases the amount of compensation that airlines must pay passengers if they are refused boarding. It also gives new compensation and assistance rights to passengers whose flights are cancelled or severely delayed.

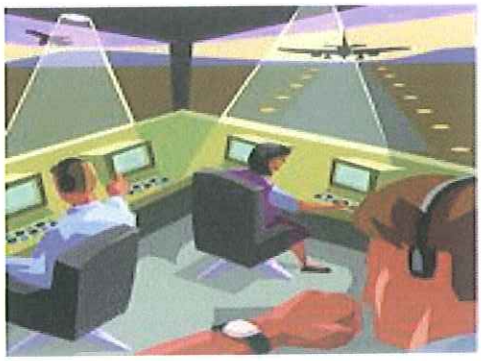

Figure 3. 23 Consultation on Single European Sky Air Transport Management Research (SESAR)

The Department for Transport's consultation on SESAR seeks the views of industry on the need for a SESAR-type project to define and coordinate the delivery of the next generation Air Traffic Management (ATM) system in Europe and on the Council Regulation[102] setting up a Joint Undertaking to oversee it. The Regulation sets up the JU and defines its constitution, objectives and tasks one of which will be to manage the implementation of the ATM Master Plan currently being drawn up under the so-called Definition Phase.

3.4.7 Intermodal Transport

The Marco Polo Programme is a financial instrument aimed at reducing congestion on the road network, improving the environmental performance of the transport system and boosting intermodal transport, thereby contributing to a more efficient and sustainable transport system.

[102] Under section171 of the European Community (EC) Treaty).

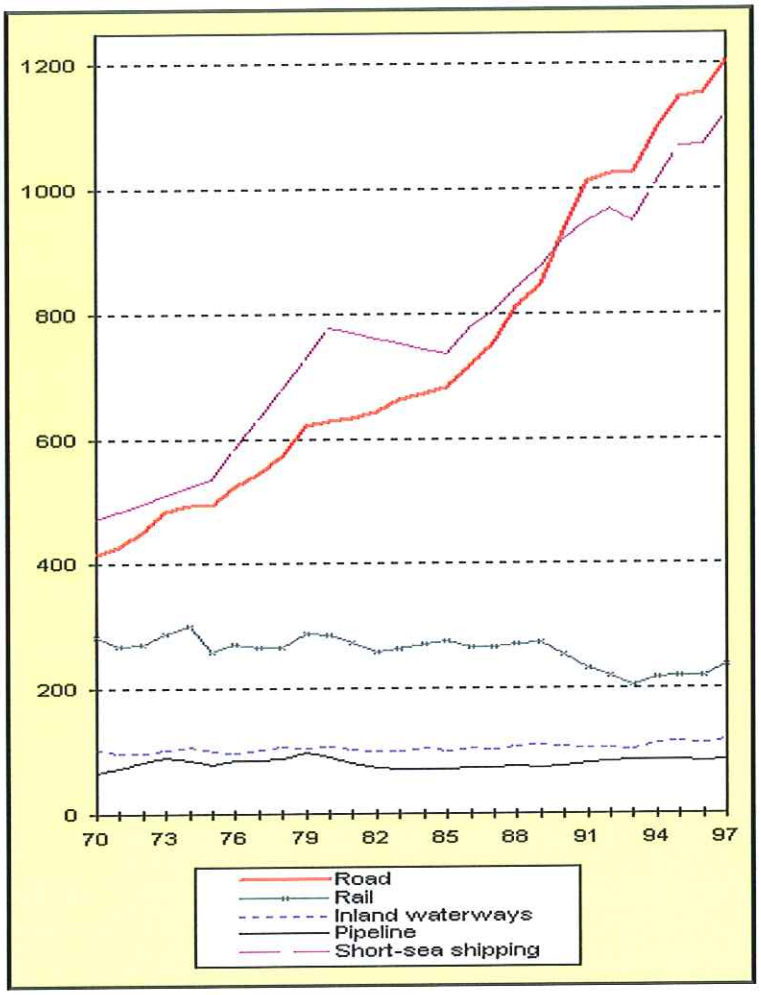

Figure 3. 24 Growth in the freight transport sector (billion tonxkm)

The Programme supports commercial measures which result in a shift in the freight services market from road haulage to more environmentally friendly forms of transport.

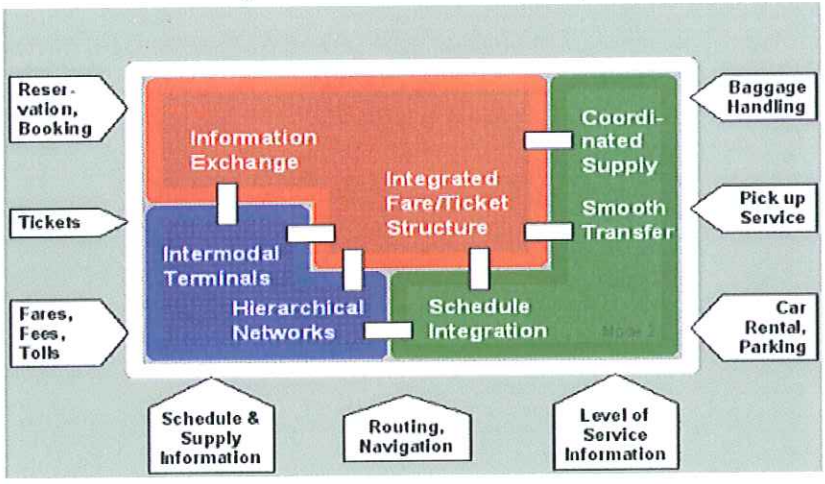

Figure 3. 25 Intermodal transport system

3.4.8 Infrastructure Charging

The main aim of the Commission policy on infrastructure charging is that, for every mode of transport, taxes and fees must be variable so as to reflect the cost of different pollution levels, travelling times, damage and infrastructure costs. It is important to apply the "polluter pays" principle and to provide clear fiscal incentives to contribute to achieving the targets for reducing traffic jams, fighting pollution, redressing the balance between the different modes of transport and removing the link between transport growth and economic growth.

The latest Commission initiative concerning transport infrastructure charging is a proposal for a Directive amending the "Eurovignette" Directive on the charging of heavy goods vehicles for the use of certain infrastructures.

3.5 WHITE PAPER EU TRANSPORT POLICIES FOR 2010

The European Commission published a White Paper "European Transport Policy for 2010: time to decide" on 12 September 2001. The final objective of the White Paper was to reduce the negative effects of transport under a situation of strong economic growth, without compromising the latter. The White Paper also tried to improve the place of the users within the system of transport, giving to citizens a system which meets public service needs, defines passengers' rights and ensures increased safety.

This set out the framework for all EU level transport policy, including some 60 specific measures to be taken at a European level. It also set out an action programme for the period until 2010, with milestones along the way. There is also a midterm review[103] of the White Paper which published in 23 December 2005, to check whether targets are being met and whether adjustments need to be made.

The policies in the White Paper can be summarised under 13 key headings. The following section outlines these policies and examines action taken by the EU to date and proposed future action.

3.5.1 Revitalising the Railways

The Commission proposes the revitalisation of rail transport, particularly rail freight, by introducing competition between railway companies, stating that:

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[103] This (white paper) is available on the site, http://ec.europa.eu/transport/transport_policy_review.

"The arrival of new railway undertakings could help to bolster competition in this sector and should be accompanied by measures to encourage company restructuring that take account of social aspects and work conditions".[104]

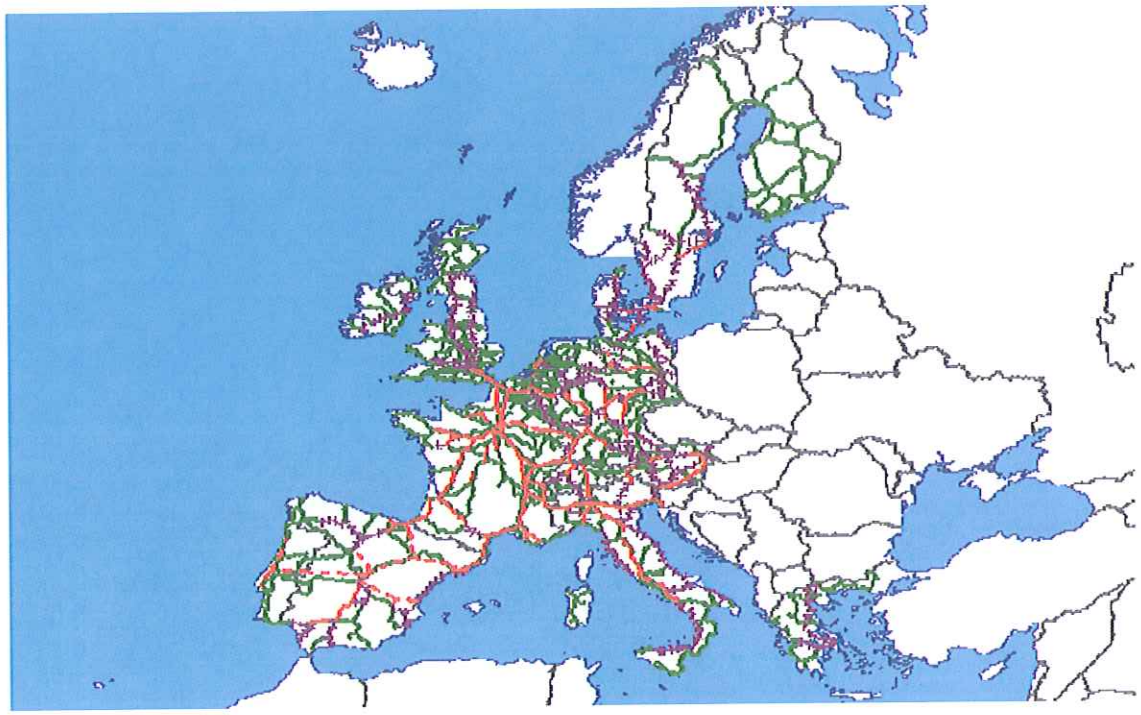

Figure 3. 26 European Railways

The Commission's priority is to open up the individual national rail systems of members states, not only for international freight services but also for cabotage on the national markets (to avoid trains running empty) and for international passenger services. The opening-up of the markets can only happen with further harmonisation of the technology used by individual national rail infrastructure and operating companies.

On 15 March 2003 the "First Rail Package" was introduced across the European Union. This "Package" is made up of three Directives, i.e. 2001/12[105], 2001/13[106] and 2001/14[107], which were adopted by the Council of the European Union on 26 January 2001, the main points of which were:

- The separation of essential functions on the basis of a specific, exhaustive list of tasks that have to be assigned to an independent railway authority to ensure the

[104] (European Commission 2001).
[105] Directive 2001/12 modifies Directive 91/440 (consolidated version) on the development of the Community's railways. O J L 75, 15.03.2001, p.1-25.
[106] Official J. L.75, 15.03.2001, p. 26-28.
[107] Official J. L.75, 15.03.2001, p. 29-46.

principle of non-discrimination between competing railway undertakings. In the UK this role is already performed by the Strategic Rail Authority (SRA)

- The establishment of an independent rail regulator in each country to ensure fair and non-discriminatory access conditions for all railway undertakings. In the UK this role is already performed by the Rail Regulator
- Guaranteed access rights to the Trans-European rail freight network to all licensed rail operators providing international rail freight services on this network and meeting the national safety requirements
- The setting of charges for the use of infrastructure using the principle of charging on the basis of marginal cost. Track access charges in the UK are set by the Rail Regulator
- The establishment of transparent and fair rules and procedures for the allocation of train paths. This task is already undertaken in the UK by the SRA.

During 2002 the European Commission submitted proposals for a "Second Rail Package" to the European Parliament and Council, under the co-decision procedure, which contained five key proposals:

- Developing a common EU approach to rail safety
- Bolstering the fundamental principles of interoperability
- Setting up a European Railway Agency
- Extending and speeding up opening of the rail freight market, full network competition by 2006
- EU to join the Intergovernmental Organisation for International Carriage by Rail (OTIF)

The European Parliament adopted the second package in its first reading on 14 January 2003. The Council adopted its common position on the proposals on 26 June 2003. The proposals will soon be sent to the European Parliament for a second reading to obtain an agreement on the points where divergences exist between the Council and the Parliament.

In response to consultation on the Second Railway Package, English, Welsh and Scottish Railways (EWS), the only UK freight operating company to operate trains between the UK and continental Europe, welcomed most of the proposals. It raised some concerns, however, stating:

"The Commission rightly states that "quality is the key to attaining the desired shift of balance between modes" but it should accept that the measures proposed in the Second Railway Package must all tackle rail's uncompetitiveness. Proposals to improve safety, environmental performance and inter-operability will be futile if they raise rail's overhead costs and make it less competitive instead."[108]

3.5.2 Improving Quality in the Road Transport Sector

Since 1 January 1993, any road transport operator wishing to carry out an operation between Member States must hold a Community license, issued by their home Member State. This document gives them free access to the whole of the EU. To obtain such a licence operators must meet a number of conditions laid down partly by EU common rules and partly by the Member States themselves.

The White Paper states that the Commission will propose legislation allowing harmonisation of certain clauses in contracts in order to protect carriers from pressure to reduce prices to unsustainable levels by users, who can take advantage of the very fragmented nature of the road haulage market. These changes would enable operators to revise their tariffs in the event of a sharp rise in fuel prices. Other measures to harmonise and tighten up inspection procedures will be introduced in order to put an end to the practices preventing fair competition.

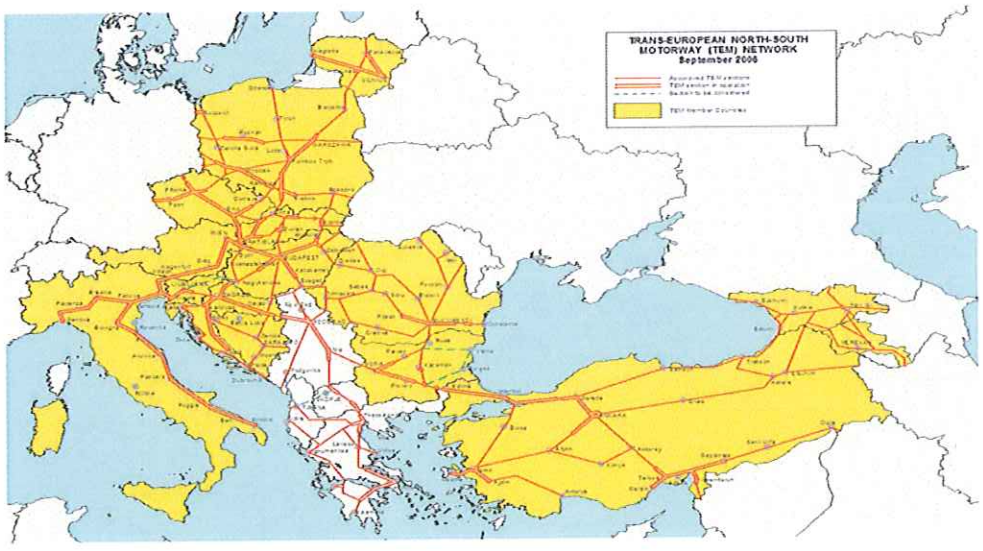

Figure 3. 27 Trans-European North-South Motorway (TEM) Network

[108] (English, Welsh & Scottish Railway 2002).

At present there are no major legislative proposals stemming from the White Paper's policies on road haulage before the European Parliament or Council, although the European Commission produced a proposal (COM(2001) 573FINAL)[109] to harmonise social legislation relating to road transport in 2001.

The UK Freight Transport Association supports the measures in the White Paper:

"...aimed at enhancing the competitiveness of the road freight sector. FTA recognises the need to harmonise checks and enforcement sanctions by the end of 2001 in order to promote an efficient and uniform interpretation, application and control of existing road transport legislation. FTA also supports the Commission's proposals to harmonise vehicle taxes and duties in order to create a competitive level playing field for the road freight industry.

FTA believes that efforts to reduce congestion and pollution should focus primarily on the private car user. Congestion charging and infrastructure charging schemes if introduced should bear primarily upon the private car. Assessments and operator surveys conducted in the UK show that there is limited scope for commercial vehicle operators to make significant changes in their operations in response to congestion charges."[110]

The European Commission (2003a) introduced a proposal, COM(2003)488, on 23 July 2003 with the aim of aligning national systems for road user charging and road tolls across Europe. The proposed framework covers the trans-European road network and any other road to which traffic may be diverted from the trans-European road network and which is in direct competition with certain parts of that network. It would apply to all vehicles exceeding 3.5 tonnes used for goods transport.

3.5.3 Promoting Transport by Sea and Inland Waterway

The White Paper proposes the revival of short-sea shipping through the creation of "sea motorways", which would involve developing better connections between ports and the rail and inland waterway networks, together with improvements in the quality of port services. Certain shipping links (particularly those providing a way round bottlenecks, e.g. the Alps and Pyrenees) will become part of the trans-European network, which is currently limited to roads and railways.

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[109] Official J. C. 51E, 26.02.2002, p. 234-252.

[110] (Freight Transport Association 2003)

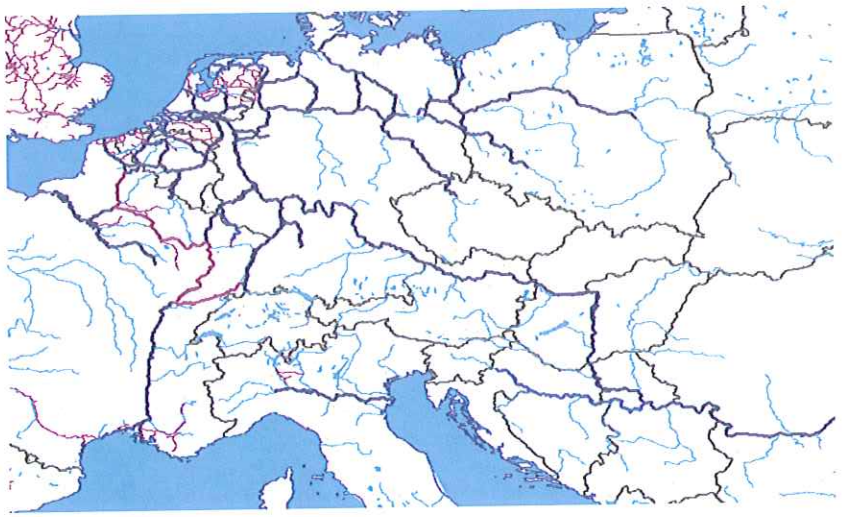

Figure 3. 28 European Inland Waterways

The Commission proposes to further reduce the use of ports and flags of convenience through collaboration with the International Maritime Organisation and the International Labour Organisation. The Commission also proposes introducing legislation setting minimum social rules to be observed in ship inspections and to develop a European maritime traffic management system. The Commission also intends to propose a directive on the tonnage-based taxation system, modelled on the legislation being developed by certain Member States.

In addition to these aims for sea-borne traffic the Commission aims to reinforce the position of inland waterway transport through the creation of 'waterway branches' to compliment the sea motorways. These policy measures would be complimented by a fuller harmonisation of:

- technical requirements for inland waterway vessels
- boatmasters' certificates
- social conditions for crews

On 7 April 2003 the European Commission (2003b) published a Communication entitled "Programme for the Promotion of Short Sea Shipping"[111], which also included a proposed Directive on Intermodal Loading Units, normally referred to as containers. The aim of the Directive is to create a Europe wide standard container, which would allow easy transhipment of goods across the continent by sea, rail and road.

[111] Stevens, Hnadley., "Transport Policy in the European Union" The European Union, March 2004, p. 167.

3.5.4 Striking a Balance Between Growth in the Air Transport and the Environment

The White Paper committed the Commission to introducing legislative proposals on air traffic control, effectively creating a single European air traffic control area, or "Single European Sky"[112]. This policy is to be accompanied by new regulations to reduce noise and pollution caused by aircraft.

The Commission has quickly taken forward the proposals for a Single European Sky, publishing draft legislation during 2002. The legislative package currently consists of four draft regulations, which cover:

- the framework for the creation of the Single European Sky
- the provision of air navigation services
- the organisation and use of airspace
- the interoperability of the European air traffic management network

Full texts of these draft regulations and details of their progress through the EU legislative process are available on the Commission's Single European Sky legislation web pages. The aim is to create a Single European Sky by 31 December 2004.

The Commission set out its strategy for reducing the effect of air transport on the environment in a Communication, "Air Transport and the Environment. Towards meeting the Challenges of Sustainable Development"[113] . This set out the Commission's priorities for reducing air and noise pollution through policy and technical developments.

Since the publication of the communication and the White Paper a new directive, 2002/30/EC[114] (European Commission 2002b), has come into force which contains four key elements:

- reduction of airplane noise at source, e.g. by phasing out noisiest planes
- land-use planning and management measures to reduce impact of air operations on environment
- noise abatement operational procedures at airports
- operating restrictions, e.g. night time flight bans

Following the tragic events of 11 September 2001 and the consequent downturn in demand for air travel the European Commission (2003c) launched a consultation on the regulation of the European market for air travel, see "Consultation paper with a view to revision of

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[112] Cook, Andrew., "European Air Traffic Management : Principles, Practice and Research", Dec. 2007, p.
[113] European Commisson 1999
[114] Official J. L.085, 28.03.2002, p. 40-46.

Regulations No 2407/92, 2408/92 and 2409/92 of 23 July 1992 (the "third package" for liberalisation of air transport)[115]. The consultation closes on 30 September 2003.

3.5.5 Intermodal Freight Transport

The White Paper highlights the importance of 'intermodal' freight transport, i.e. freight which is transported using two or more modes of transport in an integrated transport chain, in reducing the reliance on road transport. The White Paper identified two key priorities:

- increasing the technical harmonisation and interoperability between systems, particularly containers and freight loading units
- the use of the Community support programme "Marco Polo" to support innovative initiatives, e.g. sea motorways

The Marco Polo programme, which became operational in 2003, aims to support the freight transport industry to achieve sustained modal shifts of road freight to short sea shipping, rail and inland waterways. The Commission originally proposed a budget of €115m for 2003–2007, although this may be cut to €75m for 2003-2006 following discussion between EU institutions.[116]

The programme aims to provide:

- start-up support for new non-road freight transport services, which should be viable in the mid-term
- support for the launch of freight services or facilities of strategic European interest
- support for co-operative behaviour in the freight logistics market

The Marco Polo programme has the support of the transport and logistics industry. Freight Forward Europe (a body representing nine of Europe's largest logistics firms) states:

"FFE fully supports the Marco Polo Programme provided that it respects the balance between a fruitful cooperation of the market players and the competitive dimension of the logistics industry." (Freight Forward Europe 2003)

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[115] Official J. L.240, 24.08.1992, p. 1-7, p. 8-14, p. 15-17.

[116] Stevens H, "Transport Policy in the European Union (The European Union)",Palgrave Macmillan, 2004, p. 173.

3.5.6 Trans-European Network-Transport

The trans-European transport network is the name given by the Commission to a programme for the construction, modernisation and interconnection of Europe's major transport infrastructures.

In 1996 the EU adopted guidelines for the development of the trans-European transport network and identified 14 priority projects, three of which traverse or start/end in Scotland, namely:

- Conventional rail link Cork-Dublin-Belfast-Larne-Stranraer
- Ireland/United Kingdom/Benelux road link
- West Coast main line (rail)

A number of the 14 priority projects have now been completed and the Commission proposes the addition of six new projects, the only one of direct UK relevance being the development of the Galileo global navigation and positioning system.

In 2004 the Commission intends to publish a review of the trans-European network with the aims of introducing sea motorways, developing airport capacity, linking the outlying regions of Europe more effectively and connecting the networks of the candidate countries to the networks of EU countries.

A European Commission proposal (2003a), COM(2003)488 would allow national governments to cross subsidise trans-European Network priority rail projects through road user charging in environmentally sensitive areas, e.g. mountainous regions.

3.5.7 Improving Road Safety

There were 39,864 deaths on Europe's roads during 2001 (European Commission 2003d), a figure roughly equivalent to the population of Inverness (General Registrar of Scotland 2003).

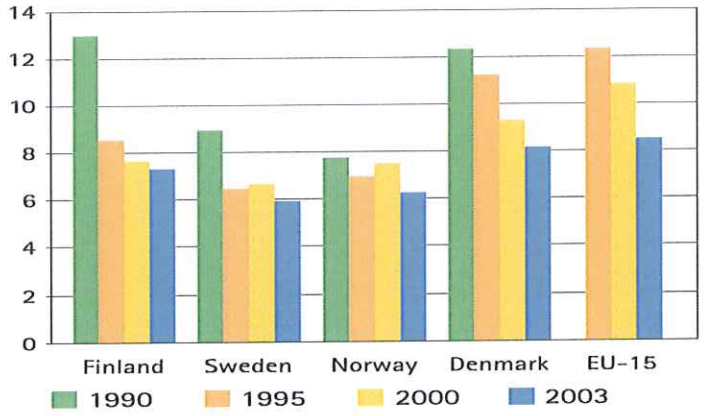

Figure 3. 29 Deaths per 100 000 population

The White Paper highlighted the slow progress in European level initiatives to improve road safety. For example discussions on a standard maximum EU-wide blood-alcohol level for drink driving offences have so far lasted 12 years without conclusion.

The European Commission (2003e) published a Communication entitled "European Road Safety Action Programme"[117] on 2 June 2003. The main aim of the Communication is to halve the number of road deaths in the EU by 2010. The European Parliament has already endorsed this objective although the Council has not done so to date. The Commission proposes three main mechanisms for achieving this goal:

- encourage road users to improve their behaviour
- make vehicles safer, in particular through technical harmonisation and support for technical progress
- improve road infrastructure, in particular by defining best practices and eliminating accident black spots

The Communication includes a draft "European Road Safety Charter" which will be open to signature by "...everyone in authority, with decision-making powers, or acting in an economic, social or representative function".

[117] B. David., M. Stephen., "Land Use and Transport : European Research Towards Integrated Policies", Aug. 2007, p. 129.

3.5.8 Adopting a Policy on Effective Charging for Transport

The White Paper highlights concerns that charging structures (i.e. taxation and infrastructure charges) for transport vary across Member States, which has a distorting effect on the operation of the transport market across the EU and also fails to encourage the use of the most energy efficient or environmentally friendly forms of transport. To redress these imbalances the White Paper develops policy proposals for:

- harmonisation of fuel taxation for commercial users, particularly in road transport
- alignment of the principles for charging for infrastructure use

The European Commission (2003a) introduced a proposal, COM(203)488, with the aim of aligning national systems for road user charging and road tolls across Europe. The proposed framework covers the trans-European road network and any other road to which traffic may be diverted from the trans-European road network and which is in direct competition with certain parts of that network. It would apply to all lorries exceeding 3.5 tonnes used for goods transport.

The aim of this policy is to ensure:

"...that transport taxes and charges, in every mode of transport, should be varied to reflect the cost of different pollution levels, travelling times and damage costs as well as infrastructure costs - to apply the polluter pays principle and provide clear fiscal incentives to help achieve our goals of reducing transport's congestion, pollution, re-balancing the modal split and decoupling transport growth from economic growth. Getting transport operators to pay is fair, and helps make better use of the existing infrastructure capacity."[118]

3.5.9 Recognising the Rights and Obligations of Users

The White Paper highlights the possibility that the Commission may consider extending the rights currently enjoyed by air passengers, under the Air Passengers Rights in the European Union (European Commission 2003f), to other modes of transport. This could cover rights to information, compensation for denied boarding due to overbooking and compensation in the event of an accident.

[118] (European Commission 2003a)

However, the current system of compensation for air passengers has not been universally welcomed by the airline industry. Ray Webster, Chief Executive of budget airline easyjet considers:

"Levels of compensation should be related to the fares that passengers have paid - flat-rates only mean that the high fare traditional airlines have to sell fewer seats to afford thecompensation. It also breaches the EU's own rules by only being applied to one form of transport".

3.5.10 Developing High Quality Urban Transport

The White Paper commits the Commission to encouraging the exchange of good practice in public transport operation and infrastructure provision. One way the Commission provides support for such schemes is through the CIVITAS Initiative, which aims to achieve a radical change in urban transport through a combination of new technology and innovative policy instruments. At present 19 European cities are participating in four CIVITAS pilot projects. The only UK city involved is Winchester, which is participating in the Miracles project[119] alongside Rome, Barcelona and Cork. The EU is providing €50m funding towards these four projects over four years. The results of these projects will be independently assessed and will form the basis for recommendations on best practice.

3.5.11 Putting Research and Technology at the Service of Clean, Efficient Transport

The 6th Framework Programme for Research, Technology Development and Demonstration (2002-2006) (FP6) was formally launched by the European Commission on 17 December 2002. This is the Union's main instrument for the funding of research in Europe. It is open to all public and private entities, large or small, with an overall budget of €17.5 billion covering the period 2003 – 2006.

The main transport related objectives of the programme are:

- Improved fuel efficiency and reduced emissions: cutting CO2 emissions and developing and validating zero-emission vehicles
- Improved performance - increasing safety, reliability, maintainability, availability, operability, energy efficiency and adaptability

[119] It is avaiblable to see on http://ec.europa.eu/environment/urban/urban_transport.htm

- Improved system competitiveness: reducing both time to market and development costs

One of the initial research projects for the programme was "Research to support the European Transport Policy", bids to carry out the research were invited by 15 April 2003 and the budget available was €39m.

3.5.12 Managing the Effects of Globalisation

The White Paper outlines the Commission's aims for the EU of opening up global transport markets to competition while maintaining the quality of transport services and the safety of users. This will be achieved through the ongoing process of World Trade Organisation negotiations. The Commission plans to reinforce the position of the EU in international organisations, with the aim of safeguarding Europe's interests at a world level, by obtaining full EU membership of the International Maritime Organisation, the International Civil Aviation Organisation and the Danube Commission.

3.5.13 Developing Medium and Long-term Environmental Objectives for a Sustainable Transport System

The Commission considers the White Paper to be just the first stage in mapping out a more long term strategy for developing an environmentally sustainable transport system. The Commission has been working in co-operation with the Council with the aim of making European transport policy more sustainable. In doing so, it has used an expert group consisting of officials from transport ministries and environment ministries in the Member States. A monitoring tool has been put in place, known as the TERM mechanism[120] to establish a baseline for decisions on sustainable transport policy.

3.6 OTHER EUROPEAN UNION TRANSPORT RELATED POLICIES

In addition to the 13 policy areas outlined above, the European Union has competence in several other areas related to the provision of transport services. Two of the most important are public service obligations and state aid for transport services, the role of the EU in regulating these functions is briefly explained below.

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[120](Transport and Environment Reporting Mechanism, details of which can be found on the European Commission's Sustainable Transport website).

3.6.1 Public Service Obligations

Direct State Aid aimed at covering operating losses is, in general, not compatible with the principles of the single European market. However, state subsidy of ferry and air routes designated as public service obligations (PSO) is permitted. A PSO is defined as any obligation imposed upon a carrier to ensure the provision of a service satisfying fixed standards of continuity, regularity, capacity and pricing, which standards the carrier would not assume if it were solely considering its economic interest.

Under EU Regulations member states have the legal authority to impose a PSO in respect of scheduled air and ferry services on routes serving peripheral or development regions within their jurisdiction. They can also impose PSOs on cross-border routes. The rationale for imposing a PSO should be based on the fact that the maintenance of regular air or ferry services is considered vital for the economic development of the region where the airport or port is located. Where a member States wishes to create a PSO a public invitation to tender must be published in the Official Journal of the European Communities. The deadline for submitting tenders is one month after the day of publication.

The invitation to tender covers the following points:

- the minimum service levels in terms of capacity, frequency and scheduling which an air operator would need to satisfy
- any limits on the level of fares or specific fare types and rules, which must be adhered to
- rules concerning any amendments and termination of the contract, in particular those which cover termination of the contract as a result of unforeseeable changes in costs and demand
- the length of the contract (up to a usual maximum of three years)
- penalties imposed on the operators in the event of failure to comply with the PSO terms and conditions

Initially, carriers are invited to tender for the PSO on the basis of no financial compensation (subsidy). If no carrier is willing to provide the level of service and fares without subsidy, the awarding authority then re-issues the tender, this time offering subsidy and limiting access to one carrier for a period of three years. Selection of the submissions by the relevant public authority takes into consideration the adequacy of the services offered, the fares to be charged to passengers and the level of subsidy required, if any.

Selection must be made two months after the submission of proposals, so that other Member States have sufficient time to submit comments.[121]

3.6.2 State Aid

As mentioned above there are strict European rules governing the award of state aid, particularly in relation to transport operations. Article 87 of the Treaty Establishing the European Community (European Commission 2002a) prohibits any aid granted by a Member State or through State resources in any form which distorts or threatens to distort competition by favouring certain firms or the production of certain goods. The aid in question can take a variety of forms, including:

- grants
- interest relief
- tax relief
- state guarantee or holding
- provision by the state of goods and services on preferential terms

By giving certain firms or products favoured treatment to the detriment of other firms or products, state aid can seriously disrupt normal competitive forces. State aid that distorts competition in the Common Market is prohibited by the Treaty Establishing the European Community. However, exceptions to this ban are allowed where:

- the aid has a social character, granted to individual consumers
- aid is intended to make good the damage caused by natural disasters or exceptional occurrences
- the aid is designed to:

(a) promote the economic development of underdeveloped areas (regarded as particularly backward in accordance with Community criteria) - this includes the designations of PSOs to such areas

(b) 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) facilitate the development of certain activities or areas

(d) promote culture and heritage conservation

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[121] World Conference on Transport Research Society and Institute for Transport Policy Research, "Urban Transport and the Environment : An international Perspective", July 2004.

In the last two cases, such aid must not affect trading conditions and competition in the Community to an extent that is contrary to the common interest. Exclusive authority for scrutinising the state aid schemes of EU governments was conferred on the European Commission by the Member States. The Commission's role is to monitor proposed and existing state aid measures by Member States to ensure that they are compatible with EU state aid legislation and do not distort intra-community competition. The Commission has the power to require that aid granted by Member States which is incompatible with the Common Market to be repaid by the recipients. The Commission have adopted a number of "guidelines" or "frameworks" to clarify its state aid policy in the following areas:

- Regions lagging behind in terms of development
- Research & development
- Employment
- Protection of the environment
- Rescue and restructuring of firms in difficulty

The Commission has also adopted a number of "block exemption" regulations for state aid to:

- Small and medium-sized enterprises
- Aid for training
- Aid for employment

Aid granted in conformity with all the conditions set out in these regulations is automatically considered compatible with the single market.[122]

[122] Flynn, James., Eeckhout, Piet., Andrea, Biondi., "The Law of State Aid in the European Union", Feb. 2004, p. 123-125.

4. MARITIME TRANSPORT

4.1 OVERVIEW

Over the centuries, Europe's economic success has been built on its use of maritime transport to trade with the rest of the world. Today, almost 90% of the European Union's external trade and more than 40% of its internal trade goes by sea. That equates to about 3.5 billion tonnes of freight loaded and unloaded in EU ports every year. The EU's thriving maritime transport sector includes maritim<e safety, ports, shipping and shipbuilding and a number of related activities and services employing about 3 million people in total.

The EU is committed to supporting those sectors so it continues to thrive and provides jobs in an innovative , safe and environmentally sustainable manner.

The European Union has adopted a range of rules on maritime safety and security to ensure quality shipping that respects the environment and guarantees an optimal level of protection for European citizens. In addition, the maritime sector contributes to the competitiveness of European business with effective solutions to the growing mobility of people and goods.

A Historical analysis of the EU legislation on Maritime Transport shows that the first issues were covered within the "Freedom to Provide Services". The lawsuit between the European Parliament and the Council in 1982 has given path to a common transport policy.[123] According to this, the Council has been taken to the European Court of Justice because of failure to establish a common transport policy, which contradicts with the Treaty of Rome, not making binding decisions for this area and because of not coming to a decision concerning 16 proposals on transport prepared by the European Commission. The Court of Justice has decided against the Council with the reason that it has not taken the necessary measures to provide the freedom of services. Following this decisions, the Community has started to develop common policies concerning areas such as the Liner Conferance,international maritime transport involving Member States.

The EU, Legislation on "Competition", which is being regulated by the articles 81 and 82 of the EC treaty, is also applicable to maritime transport. The four Regulations published in 1986 with the intention of appliying these articles to Maritime Transport are regarded as important steps to open the transportmarkets of the EU to competetion and liberaliziton.

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[123] Case 13/83, European Parliament against the European Council, (1982) ECR 1513

Generally , these regulations are being referred to as the "December 1986 Package", or the "Brussels Package".

Due to its big impacts on human and environmental security, "Maritime Safety" is being regarded as the most important topic within the EU maritime legislation. In this field, decisions on an international level are equally important in their effects as national decisions. Accordingly, the Union aims at making agreements like the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention for the Prevention of Pollution by the Ships (MARPOL) binding for every Member States. After the "Erica" and "Prestige" accidents, the Commission has intensified its work on maritime safety legislation and has adopted more than 40 Regulations/Directives concerning Port State, Flag State but also ship originated waste and enviromental pollution , port securty, ro-ro, and passenger ships.

The Community legislation related to "State Aid" is covering State Aids for Maritime Transport and ship construction. The releveant legislation has just been accepted lately and there is no new proposal in this area.

"Social Policy" is a very important part of the EU Law. There are spacial regulations on topics like working conditions and hours, maritime education, requirements of minimal security and health conditions in force.

In the EU integration project, it has been a corner stone to establish a common market for free movement for goods, citizens, services and capital since the establishment. Nevertheless, the crisis of the European economies in the 1970 th and the European Community's political deadlock in the early 1980 th accentuated that the European Commission, under the leadership of Mr. Jacques Delors, launched a new start of the Internal Marked. This was constituted with the white paper *"Completing the Internal Market"*[124] in 1985, which introduced more than 200 concrete proposals for a better Internal Market. One of the key issues was to improve the European Community's legislation procedures. Despite of the fact that not all the suggestions were carried out, the Internal Market was established in 1993. One of the greatest challenges of the EU had been accomplished.[125]

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[124] COM(1985)0310 final

[125] The European Union (Activities of the European Union - Internal Market)

In the White Paper of 1985, the liberalisation of the maritime transport sector is presented, which emphasises that it is a corner stone founding the EU, as an important part of the Internal Market.

As stated by the Commission:

"108. The right to provide transport service freely throughout the Community is an important part of the Common Transport Policy set out in the Treaty. It should be noted that transport represents more than 7% of the Community's GDP, and that the development of free market in this sector would have considerable economic consequences for the industry and trade (...)"[126]

Furthermore, the Commission argues in relation to the various transport types, one of them being maritime transport:

"109 (...) The freedom to provide sea transport service between Member states shall be established by the end of 1986 at the latest (...)"[127]

And in the European Council Regulation:

"(...) *the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries*"[128]

Thus, the liberalisation of maritime transport has been prioritised since the establishment of the Internal Market, but nowadays challenges remain to complete the vision of Delors, which have relations to the maritime transport sector. Examples of this are the current debate about the Service Directive[129] and the Port Directive.[130] Nonetheless the fact that the transport is considered as a service, it is not included in the initial proposal for a Service Directive.

In this chapter, we will introduce the parts of Maritime Transport one by one and we will try to analysis European Union Maritime Transport Policies .

4.2 ORIGINS OF THE EU MARITIME TRANSPORT POLICY

In the original Treaty of Rome, Transport policy was one of the only two so called << common Policies >> (the other being Agriculture), that was given a specific title under

[126] COM(1985)0310 final, p. 29.
[127] COM(1985)0310 final, pp. 29-30.
[128] Council Regulation (EEC) No 4055/86
[129] European Commission (The Internal Market for Services)
[130] European Commission (Maritime transport)

articles 74-84 (Articles 70-80 under the consolidated version of the treaty further to Amsterdam). This reflected the strategic importance of transport.

The Rome Treaty sought a common policy for inland transport, namely roads, rail and inland waterways. So, the concept of a common transport market was limited to these three modes of transport. Sea and air transport made their entrance on to the community stage in the middle of the seventies. Nowadays , the priority in the transport sector in moving towards infrastructures and in particular trans-European networks are developed which will help complete the internal market. Article 84 excluded sea and air transport from the provisions of Title IV (transport), which applies only to the three modes of inland transport: rail , road and waterways. The European Court of Justice[131] decided that sea and air transport were subject to the general rules of the Treaty, namely those governing freedom of movement, competition, aid, social policy and taxation. The parliament considered that minimum provisions had been adopted in the area of transport policy in accordance with Articles 3 and 74 and therefore the Council was in breach of the Treaty. The court ruled that the Council had failed to ensure the free provision of services in the area of transport.

The inclusion of air and sea transport was only confirmed later by a decision by the European Court of Justice (ECJ), which stated that the general rules in the Treaty also apply to sea transport.

Article 75 of the Treaty empowered the Council of Minister to formulate :

(a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States ;

(b) the condition under which non-resident carriers may operate transport services within a Member States ;

(c) any other appropriate provision.

However, for nearly thirty years, the transport provisions of the Treaty of Rome were interpreted to mean harmonisations of conditions, particulary of technical and social standarts but progress was slow.

The emergence of a more concerted attempt at developing the CTP received further impetus from the European Parliament (EP)which, concerned at the apparent transport policy stagnation, took the Council of Ministers to the EJC in 1983 for failing to fulfil is

[131] Case 167/73 (1974) ECR 367

Treaty obligations. The EP considered that the Council had failed to introduce a common policy for transport and in particular to lay down the framework of such policy in a binding manner. It is also criticised the council for not having been able to reach a decision on 16 proposals submitted by the Commission in relation on transport.

In 1985 the Commission proposed a series of measures and the Council adopted four of these measures in December 1986. The measures can be considered as landmarks in the development of the Common Maritime Transport Policy[132] :

- A regulation applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries.
- A regulation enabling the Community to respond to the unfair pricing practices pursued by certain shipping lines outside the Community.
- A regulation laying down detailed rules for the application article 85 and 86 of the treaty to maritime transport.
- A regulation allowing co-ordinated action by the Community should a third country restrict access to its traffic by Community shipping lines.

The Commission proposed in August 1989, a package of key measures to improve the operating conditions and competitiveness of Community shipping. These measures were two-fold :

- The establishment of aCommunity register (EUROS) in parallel with the national regiter. Following examination by the Council, this prposal was not found opportune and has been withdrawn ;
- Measures to increase competitivity of Community vessels. These measures included the tightening up of port inspections to ensure compliance with safety, environmental protection and labour standarts, proposals for a block exemption or consortia, subject to conditions and obligations to be defined in a regulation and provisions to improve crew training.

In parallel, the Commission adopted Guidelines on state aid to the shipping sector to ensure greater consistency and transparency in this area.

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[132] Regulation 4055/ 86, 4057/86, 4056/86, 4058/86

4.3 EXTERNAL MARITIME RELATIONS OF EUROPEAN UNION

On 13 September 1977, Council of Ministers adopted, by the way of Decision 77/587/EEC,[133] "Council Decision of 13 September 1977 setting up a consultation procedure on relations between Member States and Third Countries in shipping matters and on an action relating to such matters in international organizations" a consultation procedure on relations between Member States and Third Countries and to assist action within international organizations. The Decision of Council primarily aims at facilitating the exchanges of information and consultation as regards the matters in shipping between Member States and Third Countries and promoting coordination of the action taken by the Member States in the international organizations. Such a unified approach would permit the EC to combine the strengths of each of its Member States into one single bloc and accelerate Community action on the key shipping problems facing the Member States.

The information in this field is frequently exchanged in certain international organizations. It is indicated with in the Decision that these procedures should also be applied at community level by exchanges of information between the Member States and Commission. However, Member States should give the advantage of its experience in relations with third countries in shipping issues to the other Member States and to the Commission.

The scope of the consultation between the Member States and Commission shall be ;

- "on question concerning shipping matters and dealt with in international organizations ;
- on the various aspects of development which have taken place in relations between Member States and Third Countries in shipping matters ;
- on the functioning of bileteral or multileteral agreements concluded in this sphere."

Countries outside the EU may be competitors in the global market, but good relations are essential if the world's sea lanes and ports are to support international trade. The EU's strategy is to maintain and improve relations in the context of liberalising, wherever possible, services for maritime transport, while securing non discriminatory treatment for EU ships in third country ports. To this end, the EU has recently forged agreements with countries like Russia, Ukraine and South Korea that allow for mutual access to the market for maritime transport services, and provide the right to establish maritime companies. The

[133] Official Journal L 239, 17/09/1977 p. 23-24.

EU concluded a shipping agreement with China in December 2002 and is currently in similar negotiations with India.

The European Commission also takes part in regular talks on international maritime policy, especially relating to issues such as market regulation and safety. It coordinates Europe's point of view in negotiating forums such as the International Maritime Organisation (IMO) and the International Labour Organisation (ILO) where it recently contributed to the adoption of the Convention on Maritime Labour Standards on 23 February 2006.

The main ongoing research activity conducted by the Energy and Transport DG in this area is the four year MarNIS project started in November 2004. The results will prepare 'e Maritime', a step change in the use of information technology in the sector. MarNIS aims at developing systematic use of modern localisation and telecommunication techniques for all operators in the maritime sector. This would allow both better observance of all the wide ranging legislation governing the sector, and easier communication between ship and shore to solve a vast array of issues related to the handling of ships, their cargo, passengers and crew.

4.4 FREEDOM TO PROVIDE SERVICES

Maritime Transport constitutes a policy area regulated by the Community law in order to ensure a better functioning of the Community's transport market. The principle of freedom to provide services is completely applicable to the maritime transport field. Accordingly, the EU aims at organizing maritime transport in accordance with the basic principles of Community law via the Directives, Regulations and the other legal actions that are binding for the Member States.

The Treaty of Rome provides basic rules for the functioning of the European Community. It contains provisions implementing five freedoms:

<movement of goods, movement of persons, provision of services, establishment, and circulation of capital>, as well as provisions addressing, inter alia, competition, state aid, and structural policies. Most of these apply to maritime transport[134], but not all. In fact, the rules on freedom to provide services and on the Common Transport Policy are not applicable to transport by sea. Nevertheless, the freedom to provide services has been

[134] Case 167/ 73, Commission v. France (The French Seamen's Case), [1974] E.C.R. 00359.

applied to maritime transport by secondary legislation and the principles governing it are the same as those embodied in the Treaty.

Freedom of services is one of the fundamental rules of the Common Market. In the Treaty of Rome, general rules on the provision of services are incorporated in articles 49-55 (previously arts. 59-66)[135]. The subjects of freedom of services are providers of services (nationals of the Member States, both physical and legal persons established in a State of the Community other than that of the person for whom the services are intended) and receivers of services. The activity concerned must not be confined in all its aspects to one single Member State; there has to be a cross-border element[136].Article 50 (previously art. 60) provides that services within the meaning of the EC Treaty are those services "normally provided for remuneration[137]."As a fundamental rule, the freedom to provide services is considered both sensu stricte and as derived from the freedom to move to another country and to establish there for providers and beneficiaries of services. Article 49 implies abolition of all discrimination against providers or receivers of services on the grounds of their nationality. Thus, they are supposed to be able to perform their activity on the same conditions as nationals of a given state[138]. All restrictions have to be abolished, even if applied without distinction to foreign and domestic subjects, if they are liable to prevent, hinder or make less attractive the provision of services by a foreign subject[139]. On

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[135] The numbering was changed by the Treaty of Amsterdam. Consolidated Version of the Treaty Establishing the European Community, 1997 O.J. (C 340) 208, incorporating changes made by the Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Oct. 2, 1997, 1997 O.J. (C 340) 1 [hereinafter Treaty of Amsterdam] (amending Treaty on European Union [TEU], Treaty Establishing the European Community [TEC], Treaty Establishing the European Coal and Steel Community [ECSC Treaty], and Treaty Establishing the European Atomic Energy Community [Euratom Treaty], and renumbering articles of TEU and TEC).

[136] Four situations can be distinguished: **1)** the service provider moves from one Member State to another to provide a service, **2)** the recipient of a service goes to another country to receive a service there, **3)** both the provider and receiver of services move to a third country in order to provide and receive a service, and **4)** the service moves itself by means of telecommunication (telephone, fax, Internet or other data traffic, particularly in the field of financial transactions), Paul J. G. Kapteyn & Pieter VerLoren van Themaat, Introduction to the Law of the European Communities: from Maastrict to Amsterdam 752 (1998).

[137] The Treaty provides that services in particular include: activities of an industrial character, activities of a commercial character, activities of craftsmen and activity of the professions. See Commentaire article pararticle des traités EU et CE 443 et al. (Philippe Léger, ed., 2000).

[138] See, e.g., Case 39/75, Coenen v. Sociaal-Economische Raad, [1975] E.C.R. 1547; Case 110-111/78, Ministere Public and Chambre syndicale des agents artistique et impresarii de Belgique v. Van Wesemael and Follachio, [1979] E.C.R. 35; Case 63/86, Commission v. Italian Republic, [1988] E.C.R. 0029.

[139] In the case of the requirement of an authorisation for a certain activity in a Member State for the purpose of protection of consumers (e.g., in insurance), the conditions cannot duplicate equivalent statutory conditions that have already been satisfied in the state in which the undertaking is established. In the case of the requirement of diplomas or licences, as to which there is a general lack of harmonisation on the European level, a state may demand the provider of services to hold a diploma, but it has to take into consideration the

the other hand, freedom to provide services can be limited on grounds of public policy, public security or public health (art. 46 and art. 55). Other exceptions are based on case law. They can be evoked to justify only measures equally applicable to foreign and domestic subjects[140]. The limiting measures have to be proportionate to their intended objective and may be applied only if the same result cannot be achieved by less restrictive rules.

Article 51 (previously art. 61) excludes explicitly application of the chapter on services to transport. It says that freedom to provide services in the field of transport is governed by the provisions of the Title relating to transport. Thus it refers to Title V, articles 70-80.

The Common Transport Policy of the EC aims to create a unified transport system within the Common Market. Its rules are provided for in articles 70-80 (previously arts. 74-84)[141]. They however apply by their own force only to transport by rail, road and inland waterway (art. 80.1, previously 84.1). The only provision referring to maritime transport is article 80.2, which pro-vides that the Council may, acting by a qualified majority, decide whether, to what extent, and by what procedure appropriate provisions may be laid down for sea and air transport[142].

The first legislative measures regarding sea transport were taken in the late 1970s and they mostly concerned issues of external relations of the Community[143]. The Council delayed the creation of the Common Transport Policy although the first legal acts were supposed to

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diplomas, certificates and other evidence of qualifications which the person has acquired in order to exercise the same profession in another Member State. A member state is not permitted to impose a general requirement to pay the same financial charges (e.g., social security contributions) on all persons providing services who are established in other Member States, irrespective of whether they paid those charges in the state where they are established. See Jean-Claude Seche, Union Européenne et nationalité, salaries, établissements et services: les discriminations in Union Européenne et nationalité p. 70-71 (1999).

[140] The European Court of Justice divided them into two groups: measures justified by imperative requirements in the general interest and measures used to counteract the abuse of law.

[141] Christian Jung, Regulacje transportowe w Traktacie WE, Integracja Europejska/ Lektury, £ odz 1998/7, at 47 et seq.; Eufemia Teichmann, Polityka Transportowa, in Unia Europejskav at 191 et seq. (1999); Jan Burniewicz, Polityka transportowa Unii Europejskiej: uj e cie ogolne, Liberalizacja ustug transportowych w ramach Jednolitego Rynku, Integracja Europejska/ Lektury, £ odz 1998/51, at 58 et seq., Luis Ortiz Blanco & Ben van Houtte, Las Normas de Competencia Comunitarias en el Transporte 27 et seq. (1996).

[142] J. SchüBlburner, Podstawy polityki transportowej Wspolnoty, Liberalizacja ustug transportowych w ramach Jednolitego Rynku, Integracja Europejska/ Lektury, £ odz 1998/7, at 22. These procedural requirements were changed by the Single European Act, 1986 (replacing the requirement of unanimity by a qualified majority) and the Treaty of Maastricht, 1993 (introducing compulsory consultation of the Council with the Parliament). Regis Confavreux, Les transports maritimes dans le droit de la concurrence communautaire, 398 Revue de Marché commun et de l'Union européenne 370 (1996).

[143] Jerzy Kujawa, Wspólna polityka eglugowa Unii Europejskiej, Gda ñ sk 1999, p. 7-28; La Politique Commune des Transports de la CEE dans la perspective du marché unique de 1992 at 405 et seq. (1987).

be adopted by the end of 1969[144]. Member States were unwilling to hand over to the Community the relevant competences, which are usually identified with sovereignty and the political and commercial power of the state. In 1983 the Parliament brought to the European Court of Justice (ECJ) a case against the Council of the European Communities for failure to act (on the basis of art. 232, previously175)[145]. The ECJ agreed that the Council was required to extend freedom to provide services to the transport sector before the expiry of the transitional period (i.e., by 1969) and to lay down common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States and the conditions under which non-resident carriers may operate transport within a Member State. It ruled that the Council had failed therefore to fulfil its obligations under article 71 (previously art. 75)[146].

The Common Maritime Transport Policy was created on December 22, 1986, when the Council adopted a package of the following regulations:

- Reg. 4055/86[147] on the principle of freedom to provide services between Member States and between Member States and third countries—which is of particular interest for this article;
- Reg. 4056/86[148] concerning detailed rules for the application of Art. 81 and 82 of the Treaty to maritime transport;
- Reg. 4057/86[149] on unfair pricing practises in maritime transport.
- Reg. 4058/86[150] on coordination of action to safeguard free access to cargoes in ocean trade.

4.4.1 Freedom of Services in Maritime Transport

As indicated before, freedom of services is governed by articles 49-55 of the Treaty of Rome. Those provisions however do not apply to transport, as article 51.1 provides that freedom to provide services in the field of transport is to be governed by the provisions of the Title relating to transport. The Title on transport (arts. 70-80) only applies to transport

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[144] Francesco Santoro, La Politica dei transporti della Comunita' Economica Europea 383 et seq. (1974); Rosa Greaves, EC Maritime Transport Policy: a Retrospective View, in EC Shipping Policy 26 et seq. (Hans Jacob Bull, ed. 1997).
[145] Case no. 13/83, European Parliament v. Council of the European Communities, [1985] E.C.R. 1513.
[146] Kapteyn & VerLoren van Themaat, supra note 3 at 1177.
[147] 1986 Official.J. (L 378) p. 1.
[148] 1986 Official.J. (L 378) p. 4.
[149] 1986 Official.J. (L 378) p. 14.
[150] 1986 Official.J. (L 378) p. 21.

by rail, road and inland waterway (art. 80.1). Provisions relating to maritime and air transport may be adopted by the Council acting by qualified majority (art. 80.2).

In 1989, the company Corsica Ferries brought a case against French customs claiming breach of the Treaty of Rome by discrimination in port charges on the basis of nationality. Since 1981, on the basis of a Decree amending the French Code des ports maritime, charges for the use of harbor installations on French island territories had been levied on ships in connection with both the embarkation and disembarkation of passengers arriving from or going to a port situated in another Member State, while those charges were levied only on embarkation at the island port in cases of travel between two ports situated within French territory. (At the time, cabotage between French ports was reserved then for vessels flying the French flag). The ECJ ruled that, before the adoption of Regulation 4055/ 86 applying the principle of freedom to provide services to maritime transport, that freedom had not been implemented and consequently that Member States were then entitled to discriminate in the circumstances of the case. The judgment indicates that, until 1987, there was a gap respecting services in maritime transport, as the Treaty rules on services did not apply and no secondary legislation had yet been passed by the Council.

One can ask how it was at all possible that a Community created in 1957 did not have a legal structure for the functioning of maritime transport on the Community level until 1987. The reason was very political. Shipping has always been considered a characteristic of a state's independence and the size of its national fleet a measure of its power[151]. Especially at the beginning, Member States found it very difficult to give up to the Community a part of their independence, although it was a condition for the functioning of the supernational structure[152]. Member States tried hard to keep as many prerogatives as possible in the field, which is why the liberalization of shipping services did not go very fast. For example, cabotage was only liberalised in the early 1990s.

In 1986, the Council adopted Regulation 4055/86 on the principle of freedom to provide services between Member States and between Member States and third countries. It came into force on January 1, 1987. It provides that freedom to provide services between Member States and between Member States and third countries shall apply in respect of

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[151] Johan Schelin, Skeppsregistering och de fyra friheterna, lecture at Oslo University (March 7, 2001).

[152] It was particularly difficult for the Member States to give up their prerogatives in shipping, and constant struggles in the Council did not allow the unanimity necessary for creation of the common policy in shipping. This is why the unanimity requirement had to be replaced by a majority voting; only then was such a decision possible.

nationals of Member States who are established in a Member State other than that of the person for whom the services are intended (art. 1.1). The provisions of the Regulation apply also to nationals of the Member States established outside the Community and to shipping companies established outside the Community and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation. (The second option includes ships chartered bareboat by the nationals of EC Member States.) Services that the Regulation concerns are "maritime transport services between Member States and between Member States and third countries normally provided for remuneration." Two categories of carriage services are distinguished: intra-Community, that is, "carriage of passengers or goods by sea between any port of a Member State and any port or off-shore installation of another Member State" and thirdcountry, that is, "carriage of passengers or goods by sea between the ports of a Member State and ports or off-shore installations of a third country (art. 1.4). Since January 1, 1993, all restrictions on maritime transport between Member States and between Member States and third countries have been abolished. Moreover, the Regulation provides for the subsidiary application of some provisions on the establishment and services of the Treaty of Rome. It says that "the provisions of Articles 55 to 58 [now arts. 45-48] and 62 [now deleted] of the Treaty shall apply to the matters covered by this Regulation."

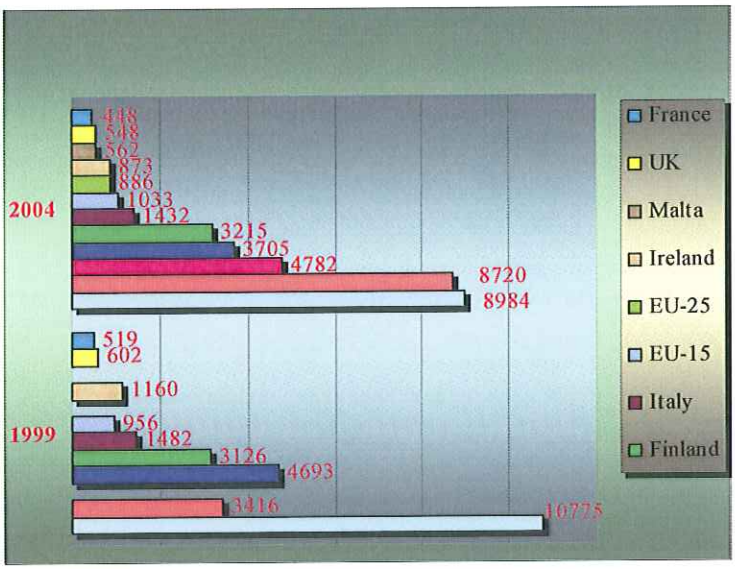

Figure 4. 1 Passanger transport by Sea

The Regulation was a long awaited and important step in the liberalization of the maritime transport market. It was however not left without criticism. Critics attacked the lengthy

transitional periods for some states as well as the lack of definitions for key terms, such as "cargo-sharing agreements" or "fair and non-discriminatory access." It was also said that the implementation of the Regulation depended on the good will of the third countries trading with EC members, especially as to cargo-sharing agreements[153], a problem to be addressed below.

Three main issues soon preoccupied the European Court of Justice. The first concerned so-called "cargo-sharing agreements" between Member States and third countries, the second related to various forms of discrimination on the grounds of nationality, and the third involved cabotage.

4.4.1.1 Cargo Sharing Agreements

Services of carriage of goods by sea are provided in two forms. The first is so called "tramp" shipping, when the whole ship is chartered for the carriage of cargo to a given place of destination. Freight rates depend on demand and supply. The second form is "liner" shipping, when ships transport different kinds of cargo (usually at once) and run regularly between given ports at set times. To meet their schedules, liners will run even if they are not full. Freight rates are comparatively stable[154]. Liner shipping is usually provided by conferences. According to the definition of The United Nations Conference on Trade and Development, a liner conference is:

- a group of two or more vessel operating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with regard to the provision of liner services[155].

Once Regulation 4055/86 was passed and the gap with respect to Community regulation of services in maritime transport was closed, many cases were brought to the European Court of Justice concerning cargo-sharing arrangements in liner shipping in bilateral agreements concluded by Member States with third countries.

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[153] Rosa Greaves, Transport Law of the European Community 121 (1991).
[154] Regis Confavreux, Les Droit de la Concurrence et les Transports Maritimes 370 (1998).
[155] Vincent Power, EC Shipping Law 295 (1998).

In order to explain the concept of cargo-sharing agreements, their genesis has to be revisited. After the Second World War, a number of new countries appeared on the map of the world (particularly former colonies that had acquired independence). They aspired to free their international commerce from dependence on the shipping services of fleets of the more developed countries. For that purpose, they sought to adopt adequate internal legal measures and to reform international maritime law with regard to the interests of developing countries[156]. In consequence, after a few years of negotiations, the United Nations Conference on Trade and Development (UNCTAD) adopted, in April 1974, a Code of Conduct for Liner Conferences[157]. Among the objectives of the Code of Conduct were facilitating the orderly expansion of world sea-borne trade, stimulating the development of regular and efficient liner services adequate to the requirement of the trade concerned, and ensuring a balance between the interests of suppliers and users of liner shipping services. According to the Code, the shipping companies of a country served by a liner conference have an inalienable right to membership in that conference. Shipping companies of each of the two countries involved are entitled to forty per cent of the transport operations between those two countries and those of third countries are left the remaining twenty per cent. Also, under the Code, the fixing of freight rates is to be based on certain criteria[158].

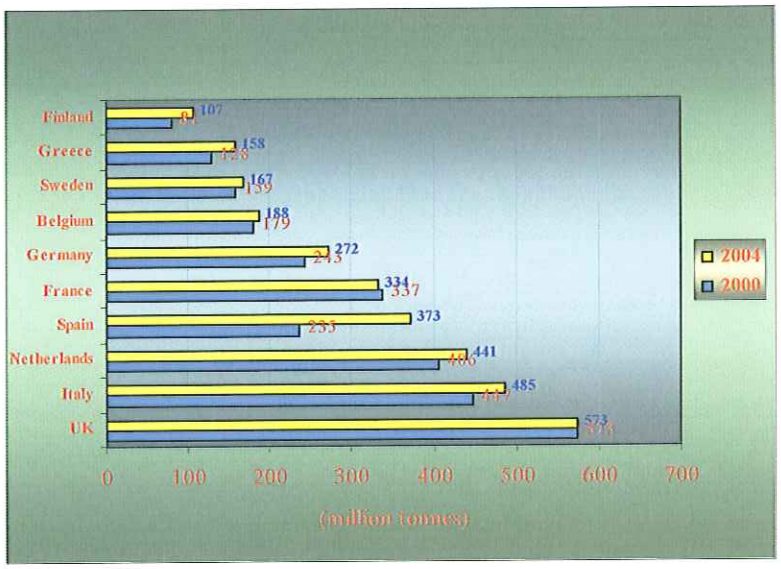

Figure 4. 2 Tonnage of freight Transport by Sea

[156] 2 Prawo Morskie 1 at 133 et al. (Jan £ opuski, ed., 1998); Riccardo Manfrini, Il Traffico Marittimo nel Diritto Comunitario 25 et seq. (1994).
[157] UN Conference on Trade and Development, The Regulation of Liner Conferences: A Code of Conduct for the Liner Conference System, U.N. Doc. TD/CODE/11/REV.1 (1974), reprinted at1988.
[158] Power, supra note 22 at 299.

The Code entered into force on April 6, 1983. The European Community ratified it in Council Regulation 954/79[159], with reservations relating to freedom to provide services and freedom of establishment in the Community. The EC decided that the 4:4:2 formula for cargo sharing would not govern relations between its Member States, as it was in breach of the prohibition of discrimination on grounds of nationality within the rules on freedom to provide services. In essence, Regulation 954/79 provides that, respecting trade between an EC Member State and a non-EC developing state, any of the shipping companies of any EC Member State should have access to the forty per cent of transport operations allocated to the the party that is an EC Member State. Another forty per cent may be reserved for shipping lines of the party that is a developing country, and the remaining twenty per cent for the shipping lines of other countries (except those of EC Member States). According to articles 3 and 4 of Regulation 4055/ 86, existing cargo sharing agreements were to be phased out or adjusted in accordance with the above rules by January 1, 1993. To this situation, article 307 (previously 234) of the Rome Treaty applies. According to that article:

- [T]he rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaty. To the extent that such arguments are not compatible with the Treaty, the Member State or States concerned shall take appropriate steps to eliminate the incompatibilities established.

As to future cargo-sharing agreements, their conclusion is prohibited unless in exceptional circumstances where Community liner shipping would not otherwise have an effective opportunity to ply for trade to and from the third country concerned[160]. For that purpose a decision of the Council, acting by qualified majority on a proposal of the Commission, is needed[161].

The cases about cargo-sharing agreements that were brought at the European Court of Justice related mainly to the delays of Member States in adjusting their cargo-sharing

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[159] 1979 Official.J. (L 121) p.1.

[160] Council Regulation 4055/86 art. 5, 1986 Official.J. (L 378) 1.

[161] Id. art. 6. Such an authorization was granted by the Council to the Italian Republic for the conclud-ing of a cargo sharing agreement with Algeria due to the Algerian practices of 80% cargo reservation which created a situation in which Italy no longer had effective access to trade with the country. Council Decision 87/475/EEC, 1987 Official.J. (L 272) 37.

agreements to the EC law and to the introduction of new agreements incompatible with EC law. Cases of the first sort arose from agreements between Luxembourg and Belgium and the Republic of Côte d'Ivoire[162], Luxembourg and Belgium and the Republic of Senegal[163], Belgium and the Republic of Zaire (Kongo)[164], Portugal and the People's Republic of Angola[165], Portugal and Federal Republic of Yugoslavia[166]. The ECJ declared that, by failing to denounce or adjust such an agreement so as to provide for fair, free and non-discriminatory access by all Community nationals to the cargo operations between a third country and an EC Member State, the Member State concerned failed to fulfil its obligations under articles 3 and 4 of Regulation 4055/86 applying the principle of freedom to supply services to maritime transport. Cases of the second sort, that is, in which newly concluded agreements were challenged, arose from agreements between Luxembourg and Belgium and Malaysia[167] and between Luxembourg and Belgium and the Togolese Republic[168]. The ECJ ruled that, by introducing cargo-sharing arrangements, the States failed to fulfil their obligations under article 5 of Council Regulation 4055/86 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries.

The Common Market did not happen without problems. Some areas were more difficult to liberalise than others. In that of transport of goods by sea, Member States tried to retain the arrangements favorable to their foreign trade[169]. Even when, eventually, cargo-sharing agreements were prohibited, Member States delayed implementing the rule and some of them even tried to conclude new ones. Moreover, the implementation of the principle of free access to cargo depended on the goodwill of the developing countries as well, and they did not always want to cooperate[170].

In such circumstances, the role of the Commission is very important. It acts as a "watchdog" of the Community's good order and makes sure that he common interest of the Community as a whole prevails over the particular interests of Member States. When the Commission notices a breach of EC law, it immediately notifies the Member State

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[162] Case 201/98, 202/98, Commission v. Belgium and Luxembourg, [1999] E.C.R. I-05517.
[163] Case 201/98, 202/98, Commission v. Belgium and Luxembourg, [1999] E.C.R. I-05517.
[164] Case C-170/98, Commission v. Belgium, [1999] E.C.R. I-05493.
[165] Case C-62/98, Commission v. Portugal, [2000] E.C.R. I-05171.
[166] Case C-84/98, Commission v. Portugal, [2000] E.C.R. I-05215.
[167] Cases C-176/ 97, 177/97, Commission v. Belgium and Luxembourg, [1998] E.C.R. I-03557.
[168] Cases C-171/98, 202/98, Commission v. Belgium and Luxembourg, [1999] E.C.R. I-05517.
[169] Jürgen Erdmenger, *Vers une Politique des Transports pour l' Europe* 116 (1985).
[170] Greaves, supra note 20, at 121.

concerned. If the State does not remedy the situation quickly, the Commission can bring an action for infringement to the European Court of Justice on the basis of article 226 of the Treaty of Rome[171]. There would be no Common Market without the Commission's active supervision, and its oversight is very important for the creation of Common Maritime Transport Policy in particular.

4.4.1.2 National Discrimination

In addition to cases about cargo-sharing agreements, a second group of cases were brought at the ECJ once Regulation 4055/86 extended the rule of freedom of services to marine transport. These involved allegations of discrimination in one Member State against ships' operators that were nation-als of other Member States or against ships flying the flags of other Member States. Such inter community discrimination is prohibited. Freedom to provide services means not only the prohibition of direct discrimination on grounds of nationality but also the abolition of all restrictions which, although applied equally to national and foreign ships and operators, could nevertheless prevent, hinder or make less attractive the provision of services by foreign providers.

One of the earlier cases concerned tariffs for piloting services in Italian ports (among others, Genoa)[172]. The employment of piloting services was compulsory for all ships entering Italian ports and failure to employ them was a criminal offence. Services were provided by local undertakings which applied various tariffs (authorized by a competent authority) depending on whether a vessel was permitted to carry on maritime cabotage or not. At that time, only vessels flying the Italian flag could obtain a permission to engage in maritime cabotage. Thus, the practice of assessing different pilotage charges fell more heavily on ships flying flags of other Member States or flags of third countries, even if those ships were controlled by companies established under the law of a Member State. The difference in tariffs had an effect on the cost of services and thus placed foreign ships at a disadvantage in comparison with Italian economic operators who benefitted from the preferential tariffs. The ECJ ruled that such a practice was prohibited as a breach of article 1.1 of Regulation 4055/ 86 and article 6 [now 12] of the EC Treaty, which lays down the general prohibition of discrimination on grounds of nationality.

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[171] Kapteyn & VerLoren van Themaat, supra note 3, at 446 et al.
[172] Case C-18/93, Corsica Ferries Italia Srl v. Corpo dei Piloti del Porto di Genova, [1994] E.C.R. I-1783.

In another Italian case, the ECJ decided that the legislation requiring shipping companies established in other Member States, when their vessels made stops in Italian ports, to employ the services of local mooring groups, which held exclusive concessions, was not in breach of EC law. The legislation concerned made no distinction according to the origin of the goods transported, as its purpose was not to regulate trade in goods with other Member States but to ensure safety in ports[173]. The charge for the services was indeed higher than its real cost, but it was necessary to maintain universal service essential for safety in port waters and all the ships were charged the same amount. The importance of the services justified restrictions on the freedom to provide them as long as the restrictions were applied without distinction to all operators[174].

In 2002, the ECJ ruled that introduction of a tax on passengers embarking and disembarking in the ports of Genoa, Naples and Trieste when arriving from or travelling to ports in another Member State or a third country but not another Italian port violated the principle of freedom to provide services as enshrined in article 1 of Regulation 4055/86[175].

In the course of criminal proceedings against Matteo Peralta, the captain of an Italian tanker, an Italian court asked the ECJ for a preliminary ruling on the accordance with EC law of national legislation prohibiting in territorial waters all vessels, and on the high seas only vessels flying the national flag, from discharging harmful chemical substances, and penalizing infringements of masters of vessels who were Italian nationals by suspending their professional qualifications[176]. The ECJ ruled that the legislation was not contrary to the EC law as it prohibited all vessels, regardless what flag they flew from discharging

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[173] C-266/96, Corsica Ferries France S.A. v. Gruppo Antichi Ormeggiatori del porto di Genova, [1998] E.C.R. I-3949.

[174] One has to realize that EC Member States decide themselves what services are going to be classified as services of general interest in their state and what undertakings are going to be entrusted with their provision. The Court of Justice gives its preliminary ruling on the basis of the facts given by a national court and it cannot question them. In the Corsica Ferries case it was outside of the competences of the ECJ to pronounce itself on the fact of institution of mooring services as services of general interest. It could only answer the questions. The only institution competent to challenge the legislative solutions of a Member State is the Commission. First, it gets in touch with the state and and informs it about the objections. If the state does not convince the Commission about its reasons and does not change its leg-islation, the Commission can bring a case to the ECJ in a so-called infringement procedure. Only then the Court can state that a Member State failed to fulfill its obligations.
In the future, the freedom of Member States to assign to port services the status of public service may be restricted, as the Commission has prepared a proposal for a directive the subject, Com (02) 101 and Com (03) 208.

[175] C-295/00, Commission v. Italy, [2002] E.C.R. I-01737.

[176] C-379/92, Criminal proceedings against Matteo Peralta, [1994] E.C.R. I-03453. See also A. Martinez Sanchez, *La prohibicion italiana de realizar vertidos al mar no es contraria a las libertades basicas del Mercado interior,* 98 *Gaceta Juridica de la CE* 17-20 (1994).

harmful substances into the territorial sea, where Italy had jurisdiction and imposed similar prohibition only on Italian vessels on the high seas, where Italy's jurisdiction did not reach other ships. As, within territorial waters, the legislation did not make any distinction between vessels that carried goods internally and those that carried to other Member States, nor between services for products exported and those marketed domestically, it could not be regarded as a restriction on freedom to provide services. Moreover, the purpose of the act was not to regulate trade in goods with other Member States but to protect the environment. As to the prohibition laid on national vessels on the high seas, the legislation could not be considered contrary to the principle of non-discrimination solely because other Member States applied less strict provisions. Such disparities between legislation of Member States are acceptable as long as the problem has not been harmonized on the Community level[177].

The end of discrimination is one of the most important bases of the EC law[178]. That is why a finding of discrimination is equally central to the case law in the field of transport by sea. Discrimination may take various forms, some so subtle as to appear equal in the treatment of domestic and foreign service providers on the same footing, but in fact relegating the foreign providers to a disadvantageous position. Member States will always try to protect their own products and nationals, although they are now left to do so only in a disguised way. The ECJ has always been very strict when encountering any favorable treatment of own nationals by a Member State or dis-criminatory treatment of other EC nationals[179]. That same strict approach has been adopted in cases concerning maritime transport[180]. Non-discriminatory treatment of all EC products, nationals, and services, regardless of which country they are from and which country they are in, is essential to the Common Market, and no argument for a special status to be afforded shipping has been accepted.

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[177] Kamiel J.M. Mortelmans, *La discrimination à rebours et le droit communautaire, Diritto comunitario e degli scambi internazionali* 1980/XIX/1, pp. 1-30 and Stephen D. Kon, Aspects of Reverse Discrimination in Community Law, Eur. L. Rev., June 1981, at pp. 75-101.

[178] Marie-France Christophe Tchakaloff, Le principe de non-discrimination in Réalité et perspectives du droit communautaire des droit fondamentaux 187, (2000) and Fernand Schockweiler, La portée du principe de non-discrimination de l'article 7 du Traité CEE, Rivista di Diritto Europeo, Jan. 1991, at 13;
Sophie Robin-Olivier, *Le principe d'égalité en droit communaitaire* 170 (1999).

[179] Paul P. Craig & Gráinne De Burca, EC Law 358 (2002); Olaf Allgårdh & Sven Norberg, *EU och EG-rätten* 111 (1999); Takis Tridimas, The General Principles of EC Law 44 (1999).

[180] Oivier de Ferron, *Le problème des transports et le Marché Commun* 270 et al. (1965).

4.4.1.3 Cabotage

Regulation 4055/86 did not deal with restrictions in maritime cabotage. A separate Regulation was adopted for that purpose in 1992, Regulation 3577/92[181], which applied the principle of freedom to provide services to maritime transport within Member States. Cabotage services includes mainland cabotage, off-shore supply, and island cabotage. Mainland cabotage is the carriage of passengers or goods by sea between ports situated on the mainland or main territory of one and the same Member State, without calls at islands. Off-shore supply is the carriage of passengers or goods by sea between any port in a Member State and installations or structures situated on the continental shelf of that Member State. Island cabotage is the carriage of passengers or goods by sea between ports situated on the mainland and one or more of the islands of one and the same Member State or between ports situated on the islands of one and the same Member State. Regulation 3577/92 introduced (as of January 1, 1993) the freedom to provide maritime transport services within a Member States for Community ship owners whose ships are registered in, and fly the flag of, a Member State. According to article 1.1, the ships of these owners have to comply with all conditions for carrying out cabotage in a given Member State. Regulation 3577/92 includes a number of temporary exemptions of which the longest, for regular passenger and ferry traffic in Greece, ends only on January 1, 2004. Other exemption periods were granted to Spain, Portugal and France, but they have already expired[182]. In fact, only mainland cabotage and some cruise shipping (excluding ships smaller than 650 tons in gross weight) was fully liberalized from the beginning. Article 3.1 provides that all matters relating to the manning of vessels engaged in mainland cabotage and cruise liners (except the smaller ships) are the responsibility of the flag state. In regards to island cabotage, all matters relating to manning are the responsibility of the host state (i.e., that in which the vessel is performing the service). That provision enables host states to restrict competition by imposing employment quotas for their nationals on vessels, even those flying foreign flags[183]. Member States may conclude public service agreements with operators or impose public service obligations as a condition for the provision of

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[181] 1992 Official.J. (L 364) p. 7.

[182] Francis McGowan, Transport morski u progu XXI wieku, Liberalizacja ustug transportowych w ramach Jednolitego Rynku in Integracja Europejska/ Lektury, £ odz 1998/ 51, p. 109.

[183] Power, supra note 22, at 223 et al.; Kujawa, supra note 24, at 43. On the other hand, the question of validity of such requirements has not been answered yet. At the moment, there are two cases in the ECJ, C-405/01 and C-47/02, where such a question has been asked, concerning Spanish (and German) legislation requiring the master of a ship flying the Spanish (or German) flag to be of Spanish (or German) nationality.

island cabotage services. They have to do so however on a nondiscriminatory basis respecting all Community ship owners[184]. In this context, a public service contract is a contract concluded between the competent authorities of a Member State and a Community ship owner in order to provide the public with adequate transport services. It may cover transport services satisfying fixed standards of continuity, regularity, capacity and quality, additional transport services, transport services at specified rates and subject to specified conditions, in particular for certain passengers or on certain routes and adjustments of services to actual requirements[185]. Public service obligations are obligations which the Community ship owner in question, if he was considering his own commercial interest, would not assume or would not assume to the same extent or under the same conditions[186]. When imposing public service obligations, Member States are limited to requirements concerning ports to be served, regularity, continuity, frequency, capacity to provide services, rates to be charged and manning of the vessel. Where applicable, any compensation for public service obligations must be available to all Community ship owners[187].

Although Regulation 3577/92 came into force on January 1, 1993, France did not amend its Customs Code. As recently as 2000, article 257(1) of that code provided that transport services carried out between the ports of metropolitan France were reserved for ships flying the French flag. France acknowledged that the Code does not comply with the Regulation and that the draft legislation amending the Code had not yet been enacted. However, a circular setting out the content of the Regulation was published in the Official Customs Bulletin and a footnote was added to article 257 with a reference to the Regulation. The ECJ agreed with the Commission that neither the circular nor the footnote could remedy the failure to amend the Code. The incompatibility of national legislation with the provisions of Community law can be remedied only by means of national provisions of a binding nature that have the same legal force as those which must be amended. Thus France failed to fulfil its obligations[188].

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[184] Reg. 3577/92, art. 4.1.
[185] Id. art. 2.3.
[186] Id. art. 2.4.
[187] Id. art. 4.2. See Dimitris Triantafyllou, L´encadrement communautaire du financement du service public in Revue trimestrielle de droit européen, §. 21 n. i (1999).
[188] Case C-160/ 99, Commission v. France, [2000] E.C.R. I-06137.

In 1996, the Commission adopted a communication entitled "Services of general interest in Europe," the purpose of which was to define the meaning of services of general interest[189]. That communication was amended in 2000. Three notions were defined: services of general interest (mainly commercial and non-commercial services which are provided in public interest and thus subject to specific obligations relating to the public character of the service in question), services of general economic interest (mainly commercial services provided in the general interest of the society, e.g. transport, energy, communication services, also subject to specific obligations relating to the public character of the service) and universal services (services of an adequate quality and accessible prices which should be available in the whole Community)[190]. Maritime carriers also provide services in the general economic interest if they operate routes not commercially viable, but neverthe-less important from the point of the general economic interest, e.g. cabotage services to or between scarcely populated islands.

Enterprises entrusted with the provision of public services or services of general economic interest are granted a special position in EC law. In principle, they are subject to the rules contained in the Treaty. According to section 2 of article 86, however, the application of those rules can be limited if it would obstruct the performance of the particular tasks assigned to these enterprises, but such a limitation cannot affect the development of intra-Community trade and cannot be contrary to the interest of the Community[191]. Thus section 2 of article 86 creates a basis for restricting the application of the principle of freedom of services or non-discrimination if it can be justified by a special mission entrusted to a transport undertaking (e.g., cabotage between scarcely populated islands). The restriction however must be absolutely necessary for the performance of a given task and proportional to the aim it is supposed to achieve.

There have not been many cases about the content of the regulation on cabotage. Regulation 3577/92 leaves no room for doubt respecting mainland cabotage; it is fully liberalised. On the other hand, island cabotage is still subject to some actual restrictions. In

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[189] 1996 Official.J. (C 281) 3.

[190] Communication from the Commission—Services of general interest in Europe, 2001 Official.J. (C 17)p.4.

[191] J. P. Spitzer, Transports et notion de service public en droit communautaire, (w:) L'Europe des Transports: regulation, dérégulation, impact du passage à l'Euro, Bruxelles 1999, s. 35 i n.; Adriano Pappalardo, State Measures and Public Undertakings: Article 90 of the EEC Treaty Revisited, Eur. Competition L. Rev. 1991/1, s. 29 i n.

Analir v Administración General del Estado[192], the Spanish court asked the ECJ for a preliminary ruling on three issues related to the freedom to provide cabotage services and the compatibility of certain Spanish legislation (Royal Decree 1466/1997) with the regulation on cabotage. The Decree concerned carriage of passengers or goods between ports situated on the Iberian peninsula and ports situated on islands and other non-peninsular Spanish territories. Such carriage was declared to be public interest shipping, and the provision of regular shipping services of public interest was subject to prior administrative authorization, which was conditional on the fulfilment of public service obligations imposed by the Directorate General of the Merchant Navy. Public service obligations could concern the regularity and continuity of the services, the capacity to provide it, the manning of the vessel, the ports to be served, the frequency of the service and, where relevant, the rates. The applicant had to be a ship owner or a shipping company having no outstanding tax or social security debts. Exceptionally, the competent authority could enter into public interest con-tracts, in order to ensure the existence of adequate services for the mainte-nance of maritime connections.

The Spanish court wondered if the requirement of prior administrative authorization to provide services of island cabotage was compatible with Regulation 3577/ 92 and if the granting and continuation of such administrative authorization could be made subject to having no outstanding tax or social security debts (that is, subject to conditions other than those set out in Regulation 3577/92). The Spanish court also asked whether the competent authority was permitted by Regulation 3577/92, at the same time and for the same line or route, to impose public service obligations on some shipping companies and to conclude public service contracts with others in order to ensure the same regular traffic to, from or between islands.

The ECJ ruled that the requirement of prior administrative authorization to provide island cabotage services was indeed a restriction on freedom to provide services and, although it was directed to both domestic and foreign shipping companies, it was liable to hinder more the market access of foreign ship owners. Due to the fact that the services in question were declared to be services of public interest, such a requirement was permissible if a real public need arising from the inadequacy of the regular transport services under the conditions of free competition could be demonstrated. Moreover, added the ECJ, it had to

[192] Case C-205/99, Asociación Professional de Empresas Navieras de Líneas Regulares (Analir) v. Administración General del Estado, [2001] E.C.R. I-01271.

be demonstrated that the prior administrative authorization scheme was necessary and proportionate to the aim pursued, and that the scheme was based on objective, non-discriminatory criteria that were known in advance of the undertakings concerned.

As to the second question, the ECJ ruled that the Regulation 3577/92 did not prohibit among the conditions for granting and maintaining prior administrative authorization as a means of imposing public service obligations on a Community ship owner, a requirement that the ship owner have no tax or social security debts outstanding. In fact, such a requirement gave the Member State an opportunity to assess the ship owner's capacity to provide services. The condition had to be applied on non-discriminatory basis.

Regulation 3577/92 did not indicate whether public services contracts could be concluded and public service obligations imposed at the same time and on the same route. Both are means to the same goal, namely to ensure an adequate level of regular maritime transport services, although they differ in nature and degree. The use of the contractual method enables the public authority to obtain an undertaking to provide the services stipulated for in the contract. The ship owner usually has to receive a financial compensation. On the other hand, when public service obligations are imposed, the ship owner usually is free to withdraw from the provision of services. The two methods may be combined, so that obligations are accompanied with some form of financial compensation. The ECJ declared that there was no reason why both methods should not be used at the same time and on the same route in order to ensure the same regular traffic, provided that a real public service need was demonstrated and in so far as concurrent use of the two methods was on a non-discriminatory basis and justified in relation to the publicinterest objective pursued[193].

The liberalization of cabotage was the last step in the creation of theCommon Maritime Transport Policy. It has not been achieved easily. At first, it was such a contentious issue that it became necessary to separate it from other liberalization steps[194]. Many Member States insisted on special treat ment (at least for island cabotage) and received transition periods. That the special conditions of transport service for scarcely populated islands warranted special treatment for their providers was even admitted by the ECJ. If ordinary application of the rules of the Treaty would obstruct the performance of the particular tasks assigned to providers of services of general economic interest, the Court will accept restrictions on freedom to provide services. However, the development of the trade must

[193] Pedro Jesús Baena Baena, *La Politica Comunitaria de los Transportes Maritimos* 175 et al. (1995).
[194] Anna Bredima-Savopoulou & John Tzoannos, The Common Shipping Policy of the EC 257 (1990).

not be affected to such an extent as would be contrary to the interest of the Community[195], as is the case for some cabotage services.

4.4.2 Evaluation of Fredom to Provide Services

Freedom to provide services is one of the cardinal principles underpinning the EC. It is a right of any national of one EC Member States to provide services to persons residing in other Member States. It is a right of tremendous significance in all areas of economy, including banking, insurance, broadcasting, and, of course, transport. Its recognition and implementation with respect to services in maritime transport must not be underestimated. The market has been fully liberalized and the ECJ underscores continuously the rule of free access to the market of all Community ship owners and the prohibition of nationality discrimination. The most controversial liberalization has been that of cabotage, but it has been liberalized too, most completely with regard to mainland cabotage. Some restrictions in island cabotage are still upheld because of its public service aspects, but even those restrictions have to be applied without distinction between domestic and foreign operators. Liberalization did not happen smoothly. The Member States could not reach an agreement as to its time or limits. They did not want to hand over to the Community their traditional prerogatives regarding transport by sea, even when those were contrary to the objectives of the EC. The process took a very long time. Now, when it has been completed, one can be satisfied with the result, but one has to look back as well and admit that it took longer than it should have.

4.5 COMPETITION RULES

EC Competition is a means of achieving, among other aims, a fair, free trade and efficient internal market in the EC where business proper in a competitive environment which is beneficial to the consumer. Competition Law applies to shipping and its application is facilated, in relation to Aticles 85 and 86[196] by means of Regulation 4056/86.

Article 85 and 86 are the principle provisions concerning competition in the EC Treaty. These articles are important in the sense that is assist the understanding of Regulation

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[195] Art. 86 2. José Luis Buendia Sierra, Exclusive Rights and State Monopolies under EC Law. Art. 86 of the EC Treaty 341 et al. (1999); Derrick Wyatt & Alan Dashwood, European Community Law 656 et al. (1993).

[196] Article 81 and 82 of the TEC.

4056/86 and present how EC competition law can be applied to the shipping industry generally.

Article 85 of the EC Treaty (current article 81 of the TEC) presents that certain types of anti-competitive agreements, decisions and concerted practises between independent undertakings which may influence trade between Member States and which may effect the prevention, restriction or distortion of competition with in the Common Market or any part of the Common Market are, in the light of 85(1), in compatible with the Common Market and void under the Article 85. In essence, Article 85 in general prohibits particular types of restrictive arrangements. It is designed to prevent anti-competitive arrangements between those occupied with economic or commercial activities. It is worth mentioning that Agreements, decision and concerted practices entered into force outside the EC may still fall within the scope of 85 where the have an effect on trade within the EC.

The second significant Article in the scope of the EC competition law is Article 86 of the EC Treaty (current article 82 of the TEC). In general, Article 86 forbids certain types of abuse of a dominant position. The above-mentioned Article generally is designed to control the abusive exercise of monopoly and is complementary to Article 85.

For almost 40 years parts of the maritime transport sector have for all practical purposes been exempt from EC competition rules. In October 2004 the European Commission released a White Paper on competition rules and maritime transport.This White Paper forms part of a reform process aiming to increase competition in the EC maritime transport sector by repealing provisions permitting anti-competitive practices, including the block exemption for liner conferences.

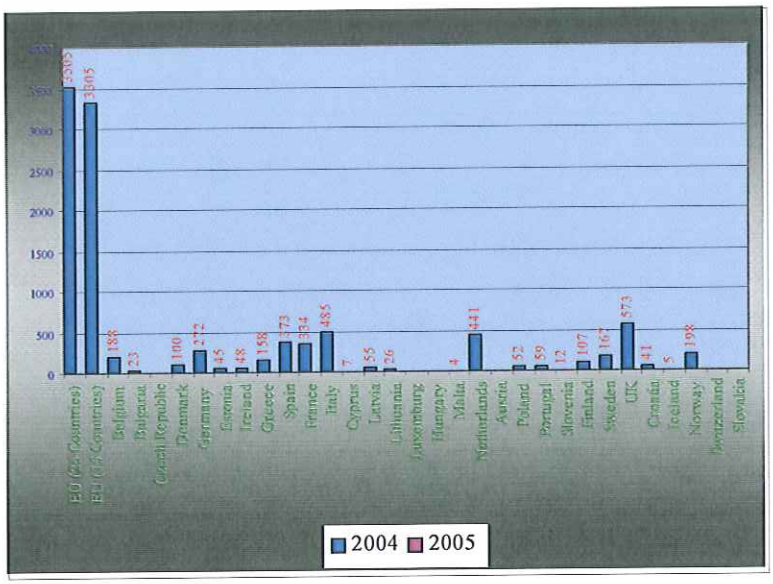

Figure 4. 3 Sea transport of goods (million t)

The EU competition law system operates on the basis that genuine competition results in the best services for the consumer, at the most affordable prices. Articles 81 and 82 of the Treaty establishing the European Community (EC Treaty) contain the core rules. While Art 81 prohibits all agreements, concerted practices and decisions between undertakings that might restrict or distort competition within the common market, Art 82 prohibits any abuse of a dominant position that may affect trade between the Member States.

Agreements restricting competition within the EC market can be exempted, provided only that they fulfil the four cumulative conditions listed in Art 81 (3): they must increase efficiency; consumers must receive a fair share of the resulting benefits; the restrictions must be indispensable to the attainment of these objectives; and, finally, such agreements must not allow the elimination of competition. So-called block exemptions can be granted under Art 81(3) to categories of agreements fulfilling these criteria.

4.5.1 EC Legislation in the Field of Maritime Transport

For many years the competition law system created by Arts 81 and 82 of the EC Treaty did not find application in the field of maritime transport. One feasible reason for this was the fact that, before the accession of the UK, Ireland and Denmark in 1973 and Greece in 1981, transport between the Member States was essentially land-bound. Another reason may be the long tradition of self-regulation characterising the international shipping industry. Its self-regulatory system was based partly on agreements among carriers,

concluded in order to provide stability to the maritime transport sector (conferences), and partly on a particular form of alliance among carriers, whose aim was to share the high costs involved in managing container fleets and to improve the quality of the service (consortia). The first attempt at regulating competition in the maritime transport sector at EU level was the simultaneous promulgation in 1986 of four Regulations[197].

Council Regulation (EEC) Nos 4055/86 and 4058/86 ensured the application of the principle of freedom of services to the maritime transport sector. Council Regulation (EEC) No 4057/86 aimed to eliminate distortion of competition coming from third country carriers. Finally, the cardinal piece of legislation relating to the maritime sector was the now controversial Council Regulation (EEC) No 4056/86, containing, notably, procedural rules and a block exemption for liner conferences[198].

The collective effect of these Regulations was to apply the competition rules enshrined in Arts 81 and 82 to the maritime transport industry, but with a separate set of procedural rules as well as certain additional substantive rules. The most notable substantive rule was the block exemption for liner conferences, contained in art 3 of Regulation 4056/86. As for the procedural rules, they were lex specialis for the maritime sector until the entry into force in May 2004 of Council Regulation (EC) No 1/2003, which repealed the procedural rules in Regulation 4056/86. The enforcement procedure enshrined in Regulation 1/2003 now applies equally to the maritime transport sector. While Regulation 1/2003 has radically reformed EC competition law enforcement, it does not modify the substantive provisions of Regulation 4056/86, nor displace the block exemption for liner conferences[199].

A final piece of legislation worth mentioning in this context is Council Regulation (EC) 823/2000, containing a block exemption for liner shipping consortia. That Regulation allows carriers to share costs and provide higher quality services, and remains largely uncontroversial and universally accepted as producing benefits.

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[197] Brittan, L., "The EC's competition policy for liner shipping set in its commercial and political context", 1993. European Transport Law. p. 172

[198] Green, N., "Competition and Maritime Trade : a critical view", 1988. European Transport Law

[199] Hjalmarsson, J.- Lista, A . , "EU competition law and maritime transport: Seismic Shock or Gentle Grumble?",(2005), Shipping and Trade Law, p. 65

4.5.2 The Block Exemption in Regulation 4056/86

The block exemption contained in art 3 of Regulation 4056/86 has some singular features compared to the norm. Unlike other block exemptions, it is not subject to renewal but unlimited in time. It also permits the use of joint price-fixing and capacity regulation -- practices not permitted by any other block exemption. As a result, it allows any type of cooperation between carriers, provided that it fulfils the terms and conditions set out by the Regulation's art 4. The rationale behind the introduction of the block exemption was that, at the time of the adoption of Regulation 4056/86, the Council and the Commission believed that liner conferences were necessary to enhance productivity and capacity utilisation, reduce costs, improve the quality of services, and grant stability to the maritime sector[200].

While originally seen as a useful tool, Regulation 4056/86 and the block exemption for price-fixing have become increasingly controversial. With Regulation 1/2003 providing for comprehensive procedural reform, modifications of substantive provisions would seem a logical next step. Opponents of the block exemption claim that liner conferences are effectively able to act as a monopoly, representing a threat to competition within the meaning of Art 81.

The economics of the situation are straight forward – within a market, any sort of agreement to fix prices constitutes an impediment to competition, in that it removes the possibility of offering the same service at different prices. As might be expected, the legal aspect is more complex. The ruling of the European Court of Justice in Pronuptia de Paris GmbH v Irmgard Schillgalis (Case C-161/84) [1986] ECR 353[201] determined that restrictions to competition do not represent a distortion to competition within the meaning of Art 81, as long as they are objectively necessary in order to grant the successful functioning of an economic system. In other words, the Court is willing to weigh up the advantages and disadvantages of an agreement related to competition. Applying this precedent to the maritime transport sector, the argument is that liner conferences are necessary in order to provide stability in the sector – but supporters of reform argue that while that line of reasoning was valid at the time of the adoption of Regulation 4056/86, the market situation is radically different today, in that some 43% of internal trade and over 90% of external trade goes by sea.

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[200] Jacobs, C., "The end of a long saga?" (2003) Scandinavian Institute of Maritime Law Yearbook, p. 187.
[201] McLellan, R.G., "The impact of regulation on liner shipping" (1996) European Transport Law.

Notable criticism of Regulation 4056/86 came in the form of the OECD report Competition Policy in Liner Shipping (April 2002), according to which there is no evidence of a positive influence from the antitrust exemptions for price-fixing granted by Regulation 4056/86.The report outlined the possibility of enhancing the efficiency of the sector by other means than liner conferences, by adopting agreements aimed at reducing costs. The report also emphasised the exclusion from the maritime transport market of new independent operators, who are willing to provide liner services but cannot compete with the liner conferences.

4.5.3 The Process of Change: Commision White Paper

In October 2004 the Commission published its White Paper on the review of Regulation (EEC) No 4056/86, applying the EC competition rules to maritime transport (COM/2004/0675). The purpose of the White Paper is to assess whether to modify or repeal the provisions of Regulation 4056/86, based on an analysis of the current situation in the maritime transport sector[202].

The White Paper discusses whether, in the current market situation, there remains justification under Art 81(3) of the Treaty for the block exemption for freight rate-fixing by liner conferences. The White Paper emphasises the extent to which the liner shipping market has changed in the two decades since the adoption of Regulation 4056/86[203]. In particular, the role of independent carriers offering liner shipping services outside a conference framework has become considerably more important. Furthermore, the Commission recognises how forms of cooperation between carriers not involving price-fixing practices (such as consortia and alliances) have increased considerably. The White Paper also highlights the significant growth of individual confidential contracting between carriers and shippers, by means of individual service contracts. The analysis results in serious doubts about the current compatibility of the block exemption for liner conferences with the EU competition law system.

The White Paper then turns to the consideration of a possible alternative framework, repealing the block exemption established through Regulation 4056/86. The result of

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[202] Porter, J., "Brussels white paper signals an end to liner conferences" Lloyd's List 13th October 2004

[203] Nesterowicz, M., "Freedom to provide maritime services in European Community law" (2003) J.M.L.C. 629.

simply repealing Regulation 4056/86, including the block exemption, would be to impose the full weight of EC competition law on the maritime transport sector – an option not seriously contemplated[204]. Instead, the White Paper takes into account other forms of shipping cooperation, the first being so-called discussion agreements. These are essentially framework agreements, by virtue of which carriers who are members of conferences and outsiders are able to organise their competitiveness on the market in relation to freight rates and other service settings in a flexible manner. This type of agreement already exists on US trades and on trades to and from Australia. Through the promotion of dialogue among carriers, discussion agreements should, according to the Commission, represent a valid alternative to the existing block exemption.

The other option contemplated is the proposal advanced by the European Liner Affairs Association (ELAA), which outlines a new regulatory framework amounting to promotion of communication between carriers, the introduction of price indices differentiated by type of equipment, and the possibility for liners to hold their own market share defined by trade, by region and by port. Commenting on this proposal, the Commission recognises the need for a phase-out of the preferential treatment enjoyed by carriers, but unequivocally stipulates the need for any regime to comply with Art 81(3).

4.5.4 Evaluation of Competition Rules on Maritime Transport

On the one hand, it is true that the maritime transport industry has always been a sector *sui generis*[205]. Policy has been governed by the concern that without self-regulation and price-fixing arrangements, the industry would take the road of destructive competition, resulting in destabilisation of the entire system. The arguments supporting the block exemption granted by Regulation 4056/86 to the liner shipping industry remain unaltered (high fixed costs, high investments risks, the need for stability). On the other hand, the block exemption introduced by Regulation 4056/86 has led to a distortion of the competitive situation in the maritime transport sector that is increasingly difficult to justify under Art 81(3). Since 1986 the market situation in the maritime transport sector has evolved

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[204] Porter, J., "Brussels white paper signals an end to liner conferences" Lloyd's List 13th October 2004

[205] Eriksson, R., "Shipping: EC maritime competition law reform – opportunities and options", 2005, Comp. L.I. p. 3

considerably. Competition from individual operators is impeded by the system of liner conferences promoted by the block exemption.

As is often the case with White Papers, this Commission White Paper does not adopt a firm stance but ponders compromise solutions. The resoluteness to repeal Regulation 4056/86 is balanced by a desire to allow some features of the status quo to persist. Discussion agreements will hardly be the means to satisfy pro-competition hardliners, for whom a regulatory framework based on communication of information between carriers is risky business – such communication is designed to involve the exchange of important business information between competitors, with inherent risks of cartel formation. More importantly, the extreme flexibility of discussion agreements makes them attractive to independent liner operators. If these are all enticed into concluding such agreements, this will eliminate external competition entirely – a consideration recalled by the Commission itself in point 17 of the White Paper. But indecisiveness is prompted by the fact that no one knows exactly what results strict enforcement of the hard line would produce – and the EU is dependent on maritime transport for its exports.

The ELAA contributed its compromise solution to the review process on the proviso that its strong preference is for Regulation 4056/86 to remain in force – meanwhile, the pro-competition corner is as ardently fought by freight forwarders and others who smell the benefits of a removal of the block exemption.

4.6 MARITIME SAFETY

Whilst many flag States and owners are meeting their international obligations, their efforts are constantly undermined by those who do not play the game according to the rules. When operators break the rules on safety and environmental protection, they put crews and the environment at risk and in addition they benefit from unfair competition.

This is a sad reality, despite the existence of a well developed framework of international rules for safety at sea and for the protection of the marine environment, most of them laid down in Conventions developed within the International Maritime Organization and the International Labour Organization.

Figure 4. 4 Anti-pollution Fleet

Considering the existing loopholes in Conventions, the important degree of discretion left to flag States and the existing possibilities to derogate from safety rules for ships in international voyages, the European Community became involved in maritime safety.

With the strategic importance of shipping to the EU economy - 2 billions tonnes of fret are loaded and unloaded in EU ports every year - and the increase of the maritime traffic going through EU waters - every year 1 billion tonnes of oil are transiting through EU ports and EU waters - the EU is constantly developing and intensifying its maritime safety policy which the aim to eradicate substandard shipping essentially through a convergent application of internationally agreed rules.

Although at Community level a few legislative decisions were taken in the period 1978-1992, maritime safety policy actually started in 1993 with the adoption of the Commission's first communication on maritime safety: "A Common Policy on Safe Seas"[206].

[206] Kristiansen S. , "Maritime Transportation : Safety Management and Risk Analysis", 2004, p. 9

This breakthrough was a reaction to accidents at sea which occurred in 1992 and 1993 with the oil tankers "Aegean Sea" which ran aground outside La Coruna harbour (Spain) on 3 December 1992 and "Brear" which grounded off the Shetland Island on 5 January 1993. In addition, the change from the unanimity to the qualified majority rule for maritime decision making on 1 November 1993 also provided an appropriate incentive to develop a comprehensive action on maritime safety.

Figure 4. 5 La Coruna Harbour

In the framework of the first communication and the implementation of the detailed action programme attached to it, several important legislative acts were proposed and adopted within 5 years. They are still the core of EU's maritime safety policy.

However, as new disasters occurred in European waters, additional actions focussing on specific shortcomings had to be initiated.

After the "Estonia" tragedy, a Ro-Ro passenger ferry which sunk on 28 September 1994, the Community adopted a comprehensive set of rules for the protection of passengers and crew sailing on ferries operating to an from European ports, as well safety standards for passenger ships operating on domestic voyages within the Community.

Figure 4. 6 Estonia Ferry and Estonia Tragedy

In the meantime, EU's new maritime strategy gave particular attention to « Quality Shipping ». A Charter on « Quality shipping » signed by key players of the maritime sector and the « EQUASIS » system are concrete results of the efforts to promote quality.

The "Erika" and the "Prestige" accidents encouraged the EU to drastically reform its existing regime and to adopt new rules and standards for prevention of accidents at sea, in particular involving oil tankers. The EU considerably reinforced its legislative arsenal to combat flags of convenience and give Europe better protection against the risks of accidental oil spills.

4.6.1 1978 - 1992 A first Set of Actions

In response to the oil spill caused by the "Amoco Cadiz", oil tanker which sunk off the coast of Brittany on 16 March 1978, the Council adopted a Resolution[207] on 26 June 1978, setting up an action programme of the European Communities on the control and reduction of pollution caused by hydrocarbons discharged at sea.

Although, this Resolution focused on the need for specific actions to improve maritime safety only a few concrete decisions were taken at Community level. In the meantime new tragedies occurred such as the capsizing of the Herald of free Enterprise off the port of

[207] Official J C162 of 08/07/1978

Zeebrugge (Belgium) on 6 March 1987 and the vast oil spill caused by the Exxon Valdez, oil tanker which ran aground off the Alaska's coast in March 1989.

On 21 December 1978, the Council adopted Directive 79/115/EEC[208] regulating the compulsory pilotage of vessels by deep-sea pilots in sensitive maritime areas such as the North Sea and the English Channel.

In June 1990, the Council adopted two further Resolutions[209], one on the prevention of accidents causing marine pollution, the other on improving passenger ferry safety. These Resolutions essentially addressed Member States, urging them to ratify the relevant international Conventions.

On 4 March 1991, Council Regulation (EEC) N°613/91[210] on the transfer of ships from one register to another within the Community, aims at facilitating the change of flag between member States on the basis of mutual recognition of safety and pollution prevention certificates as laid down in the main IMO Conventions.

On 25 February 1992, the Council adopted Council Decision 92/143/EEC[211] on radionavigation systems for Europe. The main objective of this Decision is to support international action towards a complete, consistent coverage of European waters with the terrestrial Loran-C radionavigation system.

In the meantime, the Commission made several proposals which have not been adopted. The lack of actual Community role during this period 1978-1992 being essentially due to the unanimity rule for maritime and air transport decisions, which was abandoned on 1 November 1993 when the Maastricht Treaty entered into force.

4.6.2 1993 - 2000 Promoting Safety and Quality Shipping

4.6.2.1 Environmental Protection

In its 1993 Communication "A Common Policy on Safe Seas"[212], the Commission analyses the maritime safety situation in Europe and outlines a framework for a common maritime safety policy based on four pillars:

- Convergent implementation of existing global International rules;

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[208] Official J. L.33, 08.02.1979, p. 32
[209] Official J C. 206 of 18/08/1990
[210] Official J. L.68, 15.03.1991, p. 1-3
[211] Official J. L.59, 04.03.1992, p. 17-18
[212] COM(93) 66 final, 24.02.1993

- Uniform enforcement of global International rules by the port States;
- Development of navigational aids and traffic surveillance infrastructures, and;
- reinforcement of the EU's role as the driving force for global International rule making .

An action programme attached to this Communication highlighted the main decisions to be taken to improve maritime safety in Europe and to better protect the European coasts. On the basis of this programme the Commission presented between 1993 and 2002 more than 10 different proposals. All of them have been adopted by the Council, the last one in December 2001.

The main Directives adopted in this period aim to ensure the implementation of international safety rules by all ships visiting European ports and to ensure that ships flying a flag of an EU Member State and their crew comply with international standards. Special attention has also been given to a better protection of the European coasts.

The EU approach is that international standards must be rigorously upheld but unfortunately quite number of flag States are systematically ignoring or seriously failing to implement and enforce international safety standards. As a result, although maritime safety is traditionally based on the role of flag states, the European Community considered appropriate to complete the flag state approach by the port state approach where inspections by the states where ports are located are seen by many as the most effective tool to reduce substandard shipping in their waters.

Europe is a world leader in promoting this approach, know as Port State Control. The European Union has built its legislation on IMO Resolutions and the work by the Paris Memorandum of Understanding (Paris MOU counts 20 countries: Belgium, Canada, Croatia, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Russian Federation, Slovenia, Spain, Sweden and United Kingdom) on Port State Control[213] which since 1982 provides the framework for signatory countries to carry out their inspection duties. The result is Directive 95/21/EC[214] which establishes common criteria for control of ships calling at Member States' ports and by harmonising procedures on inspections and detentions. This directive has been amended several times, including by the Erika I package.

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[213] Its avaible to see at www.parismou.org
[214] Official J. L.291, 14.11.1996, p. 42

Another Directive 94/57/EC[215] adopted in 1994 introduced a system of Community wide mutual recognition of Classification Societies. Under this directive only highly reliable and professionally competent bodies are allowed by the EU as "Recognised Organisations" to carry out statutory surveys and certification on behalf of EU Member States. This directive has also been amended several times, including by the Erika I package.

On 22 November 1994, in order to give force of law in the EU to the 1978 Convention of the IMO on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), the Council adopted Council Directive 94/58/EC[216] setting up a minimum level of training of seafarers. This Directive which was revised in 1998 to take account of the 1995 revision of the STCW Convention and further codified into Council Directive 2001/25/EC[217], requires officers on board EU-flagged ships to have undergone specific training and hold a certificate recognised under the STCW Convention. It also includes provisions for Port State control inspections.

Fatigue due to excessive working hours and lack of rest on board vessels is one of the main causes of maritime accidents. To address this problem the Council, on the basis of the ILO Convention N° 180 on "seafarers hours of work", adopted Directive 1999/63/EC[218] concerning the Agreement of the Social Partners on the organisation of working time of seafarers. In parallel to this, the adoption of Directive 1999/95/EC[219], aims to monitoring the seafarers hours of work on board ships calling at Community ports through Port State control provisions.

European seas and coasts combine dense traffic routes with areas of serious danger to shipping. For this reason the EU has taken action to prevent and reduce the risk of operational or accidental pollution of the environment by ships.

Directive 93/75/EC[220], the Hazmat directive adopted on September 1993, now repealed by the adoption of Directive 2002/59/EC[221], set up a notification system for ships carrying dangerous or polluting goods, regardless of their flag, bound for or leaving EU ports. This directive also set out a range of duties: the shipper and ship operator must provide the authorities with detailed information on the cargo carried. Precise and available at all time,

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[215] Official J. L.319, 12.12.1994, p. 20-27
[216] Official J. L.319, 12.12.1994, p. 28-58
[217] Official J. L.136 du 18.05.2001, p. 17-41
[218] Official J. L.244, 16.09.1999, p. 64
[219] Official J. L.14, 20.01.2000, p. 29-35
[220] Official J. L.247, 05.10.1993, p. 19-27
[221] Official J. L.208, 05.08.2002, p. 10-27

information contributes to preventing and minimising accidents at sea and it also enables the relevant authorities to take the necessary precautions with regard to the existence of hazardous goods on board a ship.

Council Regulation, N° 2978/94[222], repealed by the adoption of Regulation 417/2002/EC[223], encouraged the use of environment-friendly tankers in EU waters by making mandatory the IMO Resolution A.747(18) and adding strength to the promotion of tankers with segregated ballast tanks (SBT) as well as double hull oil tankers of an alternative design. In practice this aim is achieved by excluding the tonnage of the segregated ballast tanks from the port and pilotages' fees applied at EU ports.

Regrettably, despite the entry into force of MARPOL 73/78 Convention on the Prevention of Pollution from Ships, operational, often illegal, discharges of polluting substances into the sea continue to occur. For this reason the Council adopted on December 2000 Directive 2000/59/EC[224] on port reception facilities for ship-generated waste and cargo residues. This Directive aims at ensuring a consistent reduction in marine pollution by requiring provision of adequate waste reception facilities in all EU ports including recreational ports and marinas. The Directive also provides instruments to ensure that all ships, including fishing vessels and recreational craft, visiting these ports deliver their waste in facilities rather that at sea.

It has to be mentioned that under this action programme the Community also adopted rules for marine equipment placed on board of ships and safety standards for fishing vessels.

The uniform application of international testing standards and procedures for type-approval of marine equipment is ensured through Directive 96/98/EC[225]. The Directive aims at guaranteeing the harmonisation of safety rules on board of EU flagged ships through the uniform application of the international instruments relating to equipment. Certified equipment is then allowed to circulate freely within the Community. The Directive entered into force in January 1999 and its technical annexes have last been updated with the adoption of Directive 2002/75/EC[226]. On 27 February 2004 an Agreement between the European Community and the United States has been signed on the mutual recognition of certificates of conformity for a specific number of marine equipments.

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[222] Official J. L.319, 12.12.1994, p. 1-6
[223] Official J. L.64, 07.03.2002, p. 1-5
[224] Official J. L.332, 28.12.2000, p. 81-90
[225] Official J. L.241, 29.08.1998, p. 27
[226] Official J. L.254, 23.09.2002, p. 1-46

Directive 97/70/EC[227] imposes common safety requirements for new and existing seagoing fishing vessels of 24 meters of length and over. The Directive makes obligatory a series of common safety requirements based on the modified Torremolinos Convention (not yet in force and only applicable on vessels larger than 45 meters). This guarantees the same level of safety for all fishing vessels of 24 metres in length and above, irrespective of their flag and when operating in the internal or territorial waters of Member States or landing their catch at a port in the Community.

The increasing number of bulk carrier casualties in the past decades and the associated loss of human lives remain an issue of major concern for the European Commission. The particular problem with bulk carriers casualties is the heavy loss of life associated with foundering when structural failure is, or appears to be, the cause. Directive 2001/96[228] _incorporated in the EU legislation the 1997 IMO Bulk Loading and Unloading Code (BLU Code). The purpose of the Directive is to enhance the safety of bulk carriers calling at terminals in the Member States and to impose a quality system for terminals.

In 1997, the European Commission began a campaign for quality shipping, covering the whole of the sector aiming at involving the whole maritime industry (including cargo owners, insurers, classification societies, ports, etc.) in the work towards increased maritime safety. A high point of this campaign was the signing, on 22 June in Amsterdam by several dozen major players in the sector, of a <Quality charter>. The idea was that all parties should make safety considerations an integral part of their everyday activities, primarily by self-regulation.

The Quality Shipping campaign highlighted also the need for more transparency on ships and their condition. This resulted in the creation of EQUASIS. On 28 January 2000, the maritime administrations of France, United Kingdom, Spain, Singapore, Japan, the US coastguards and the European Commission signed a Memorandum of Understanding (MOU) on the setting up of the EQUASIS[229] information system. EQUASIS is a unique database collecting safety-related information on the world's merchant fleet from both public and private sources and making it easily accessible on the Internet.

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[227] Official J. L.34, 09.02.1998, p. 1-29
[228] Official J. L.13, 16.01.2002, p. 9-20
[229] Its avaible to see at www.equasis.org

4.6.2.2 Safety of Passengers Aboard Ships

In 1994, the casualty of the ferry < Estonia > in the Baltic Sea raised particular concern in the Union about the operational conditions of passenger vessels. The Community has since adopted different measures addressing this problem.

Regulation (EC) 3051/95[230] on the safety management of roll-on/roll-of passenger ferries was adopted on December 1995. It implied an early application of the ISM (International Safety Management) code as from 1 July 1996 by all companies operating regular Ro-Ro passenger ferry services in the European Union. The ISM code, adopted by IMO in 1993, aims to improve crew awareness and behaviour in the event of an emergency and lays down standards for the safe operation of ships. With the adoption of the new Regulation of the European Parliament and of the Council on the implementation of the International Safety Management Code within the Community (COM(2003) 767) Regulation (EC) 3051/95 will be repealed and the scope of the application of the ISM Code within the European Community will be enlarged in order to be in line with the requirements of the SOLAS Convention. Not only Ro-Ro passenger ships but all type of ships, operating regular service, will have to implement the ISM Code within the Community.

In March 1998, Directive 98/18/EC[231] came into force harmonising safety standards for all new and existing passenger vessels and high speed craft engaged on domestic voyages. It aimed at incorporating the provisions of the 1974 SOLAS convention for the Safety of Life at Sea by laying down detailed technical requirements which focus on vessel construction, stability, fire protection and life-saving equipment. This Directive has been modified several times.

In the same year, Directive 98/41/EC[232] on the registration of persons on board passenger ships, requiring information on the number of persons travelling on board passenger ships constituted a fundamental prescription for the safe management of such vessels. Passengers and crew have to be counted before departure for any voyage of 20 miles or more and this information has to be passed on to the master as well as to a designated person ashore. In case of accident at sea, search and rescue centres will immediately be provided with relevant information on the persons on board and this will makes more efficient the search

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[230] Official J. L.320, 30.12.1995, p. 14-24
[231] Official J. L.113, 12.05.2000, p. 55
[232] Official J. L.188, 02.07.1998, p. 35-39

and rescue operations and proper management of the consequences of any accident (medical care, insurance's, etc.)

Finally, in April 1999, the Council adopted the Directive 1999/35/EC[233] that establish a system of mandatory surveys for passenger ships and high-speed crafts operating on regular international or domestic service to or from EU ports, regardless of their flag. Its aim is to ensure that these vessels comply with international safety rules as prescribed by the IMO. This directive envisages a greater role for Member States which, as host countries, must check that the safety of vessels is indeed as stated in the safety certificates issued by the flag State. Member States will also be provided with the right to conduct, participate in or co-operate with any investigation of maritime casualties or incidents implying these services.

Under this legislation, ferry operators must comply with a series of very strict safety requirements before they can operate a schedule service. Ferries, for example, must carry a voyage data recorder (VDR) which records all useful information during a voyage, which might help establishing the causes of an accident. All the mandatory reports are stored by Member States into the Ro-Ro Ferry database set up by the European Commission. Since, September 1st, 2004, this database is managed by the European Maritime Safety Agency.

In March 2002 the Commission assessed the existing legislation and adopted its Communication on the enhanced safety of passenger ships in the Community together with a proposal on stability requirements for Ro-Ro passenger ships and a proposal on safety rules and standards for passenger ships. Both Directive 2003/25/EC[234] on specific stability requirements for ro-ro passenger ships and Directive 2003/24/EC[235] amending Council Directive 98/18/EC on safety rules and standards for passenger ships have been adopted by the European Parliament and the Council on 14 April 2003.

In December 2004, under the Committee procedure on Safe Seas and the Prevention of Pollution from Ships (COSS), Directive 2003/25 of the European Parliament and of the Council on specific stability requirements for Ro-Ro passengers ships was modified in order to be in line with the new model test method as defined in the Resolution 141 (76) of IMO on 5 December 2002.

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[233] Official J. L.138, 01.06.1999, p. 1-19
[234] Official J. L.123, 17.05.2003, p. 22-41
[235] Official J. L.123, 17.05.2003, p. 18-21

4.6.3 2000 - 2005 PROMOTING SAFE SEAS

4.6.3.1 The Erica - I and Erica - II Package of Measures

Following the "Erika" accident off the Atlantic coast on 12 December 1999 which caused more than 10000 tonnes of heavy feul oil were spilt, thereby creating exceptional high cost damages to the environment, fisheries and tourism, the European Commission prepared measures in record time designed to increase maritime safety. On 21 March 2000, the Commission adopted a first set of proposals (the Erika I package) which was followed by a second set of measures in December 2000 (the Erika II package).

Figure 7.4 Erica Accident

The Erika I package provides an immediate response to shortcomings highlighted by the Erika accident. Firstly, it strengthened the existing Directive 95/21/EC on port State control with the adoption of Directive 2001/106/EC[236]. Under the new measures, the inspection regime has been substantially reinforce in order to increase the number of ships subjected to expanded inspections and to ensure that ships which have been inspected and declared substandard on several occasions be blacklisted and refused access to EU ports. The first such list was published in the Official Journal on 25 July 2003. A second followed on 30 September 2004 listing all ships that were refused access to Community

[236] Official J. L.19, 22.01.2002, p. 17-31

ports between 1 November 2003 and 31 August 2004. At the same time, as requested by the Commission, the European Maritime Safety Agency publishes on its website a regularly updated list of ships refused access to EU ports.

Secondly, with the adoption of Directive 2001/105/EC[237] it strengthened the existing Directive 94/57/EC on classification societies which conduct structural safety checks on ships on behalf of flag States. The quality requirements for classification societies have been raised. Authorisation to operate within the EU is conditional on meeting these requirements. The performance of classification societies is also strictly monitored, and failure to meet the standards could result in penalties, i.e. temporary or permanent withdrawal of their Community authorisation.

Thirdly, with the adoption of Regulation (EC) N°417/2002, it set a timetable for phasing out single-hull oil tankers worldwide. Double-hull tankers offer better protection for the environment in the event of an accident. For this reason, the IMO had decided that all oil tankers built from 1996 on should have a double hull. However, the gradual replacement of single-hull by double-hull tankers was spread over a very long period, ending in 2026. The EU pushed for a faster phase-out and secured international acceptance for its position.

All three proposals have been adopted by the European Parliament and the Council on 19 December 2001 and entered into force on 22 July 2003.

The Erika II package completed the first package with three essential measures aiming at drastically improving maritime safety in European waters. Regulation (EC) 1406/2002[238] establishing a European Maritime Safety Agency (EMSA) responsible for improving enforcement of the EU rules on maritime safety entered into force in August 2002.

With the adoption Directive 2002/59/EC which entered into force on 5 February 2005 a surveillance and information system to improve vessel monitoring in European waters has been established. Ships sailing in EU waters have to be fitted with identification systems which automatically communicate with the coastal authorities, as well as voyage data recorders (black boxes) to facilitate accident investigation. The directive improves the procedures for exchanging data on dangerous cargoes and allows the competent authorities to prevent ships from setting sail in very bad weather. It also requires each maritime Member State to draw up contingency plans for accommodating ships in distress in places of refuge.

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[237] Official J. L.19, 22.01.2002, p. 9-16

[238] Official J. L.208, 05.08.2002, p. 1-9

The Commission also proposed within the Erika II package a mechanism to improve compensation for victims of oil spills (COPE Fund) and, in particular, raise the upper limits on the amounts payable in the event of major oil spills in European waters to €1billion from the current ceiling of €236 million. The Council of Ministers has not yet seen fit to adopt this proposal and Member States preferred to refer the discussion to the IMO in order to obtain an agreement applicable worldwide. As a result, a Protocol to the FIPOL Convention, modelled on Europe's COPE Fund, was adopted in May 2003 to create a supplementary fund. In future, the amount available for compensation for victims in the States covered by this new Fund will be €872 million for each accident occurring after the Protocol enters into force. The Protocol entered into force in 2005[239].

4.6.3.2 The Prestige Accident

Three years after the "Erika" accident, the "Prestige", a single hull tanker, sprang a leak off the Galicia coast polluting the Spanish and the French coasts with heavy fuel oil.

Figure 4. 8 Prestige sinking

The European Commission reacted rapidly to the accident by adopting a communication on improving safety at sea on 3 December 2002, which included the following main points:

[239] J. Mcconville, "International Maritime Transport : Perspectives (Routledge Advances in Maritime Studies), 2004, p. 47

With Regulation (EC) N°1644/2003[240], the timetable for opening the European Maritime Safety Agency set up as part of the Erika II package was brought forward so that the Agency could starts work six months earlier than planned. In addition, the Commission proposed giving the Agency three new tasks connected with combating pollution (placing additional resources – clean-up equipment and vessels – at the disposal of the Member States), minimum training standards for seafarers and security.

On 20 December 2002 the Commission submitted to the European Parliament and the Council a proposal for a regulation to ban immediately the carriage of heavy fuel oil in single-hull tankers; speed up the timetable for phasing out single-hull oil tankers flying the flag of an EU Member State or operating in European ports; and tighten up the technical inspections for single-hull tankers over 15 years old entering EU ports. With the entry into force of Regulation (EC) N° 1726/2003[241] on 21 October 2003 single-hull tankers carrying heavy fuel oil are no longer allowed to enter or leave ports in the Member States.

After months of intensive negotiations at the International Maritime Organisation (IMO), similar measures have been adopted with the amendment to the International Convention for the Prevention of Marine Pollution (MARPOL 73/78) which entered into force on 5 April 2005.

Finally, following the Commission's proposal on 5 March 2003, the European parliament and the Council adopted on 12 July 2005 Directive 2005/35/EC[242] on ship-source pollution and on the introduction of sanctions, including criminal sanctions for pollution offences. A complementary Framework Decision was adopted to strengthen the criminal law framework for the enforcement of the law against ship-source pollution. The Directive establishes that marine pollution by ships is an infringement. Sanctions will be applicable to any party - including the master, the owner, the operator, the charterer of a ship or the classification society - who has been found to have caused or contributed to illegal pollution intentionally or by means of serious negligence. The Framework Decision provides that in the most serious cases these infringements will have to be regarded as criminal offences, subject to criminal penalties.

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[240] Official J. L.245, 29.09.2003, p. 10-12
[241] Official J. L.249, 01.10.2003, p. 1-4
[242] Official J. L.105, 13.04.2006, p. 65

The regime introduced with the Directive tackles discharges in all sea areas including the high seas and is enforceable for all ships calling to EU ports irrespective of their flag. It provides for cooperation between port State authorities, which will make it possible for proceedings to be initiated in the next port of call. Furthermore, it aims at enhancing cooperation among Member States to detect illegal discharges and to develop methods to identify a discharge as originating from a particular ship. The European Maritime Safety Agency will assist the Commission and Member States to that end.

4.6.3.3 Third Maritime Safety Package (Brussels, 23 Nov. 2005)

Over the last ten years the EU, in particular since the Erika accident in December 1999 and the Prestige accident in November 2002 has introduced legislation aimed at improving the level of maritime safety and the prevention of accidental pollution by ships.

The positive results obtained so far are due to a large extent to the establishment in the EU of a line of defence against substandard ships, and in particular through controls of ships in European ports. These defensive arrangements represent a considerable cost for the port and coastal state administrations, even though the main responsibility for applying the security rules rests with the shipowners and flag states. Similarly, the shipowners who practice a high-quality policy suffer the consequences of the persistence of substandard shipping, which confronts them with unfair competition, repeated port controls and an overall undermining of the image of the maritime transport sector.

Moreover, despite the reduction in the number of maritime accidents, the threats relating to failure to comply with safety standards remain. The pressure on flags of convenience and more generally any defect in the maritime transport chain must therefore be maintained and even accentuated.

The seven proposals contained in the package are therefore intended to supplement the European rules concerning maritime safety and improve the efficiency of the existing measures. They take account of the experience acquired in implementing the Community legislation on maritime safety (the Erika-I and II packages and the measures adopted following the Prestige accident), and the concerns expressed on several occasions by the European Parliament, the European Council and the ministers of transport[243].

243 Eriksson, R., "Shipping: EC maritime competition law reform – opportunities and options", 2005, Comp. L.I. p. 191/205

4.6.3.3.1 A proposal for a Directive on the Conformity Requirements of Flag State

Greater responsibility for flag states is the main "missing link" in the existing Community legislation. The objective of this new proposal is to ensure that Member States effectively monitor compliance with international standards by ships flying their flags and having for this purpose a maritime administration operating in accordance with high-quality criteria, i.e. the ISO 9001/2000 standard. The standards are, for example, provided for in the SOLAS Convention (safety of life at sea) and the MARPOL Convention (prevention of pollution of marine environment).

It will be proposed to incorporate in Community law, by making it mandatory, the IMO (International Maritime Organisation) code on the conformity of flag states in the international conventions which have already entered into force for the majority of Member States. The performances of the flag states will be audited and assessed in the light of the provisions of the IMO flag states audit procedure.

Accompanying measures are provided for, including the development of a database which will help Community Member States in the exercise of their responsibilities for managing and controlling a high-quality fleet. The proposal also provides for encouraging the conclusion of agreements between EU Member States and third countries which would use the same quality standards for their flags. Such agreements should make it possible to reward quality by fewer controls.

Lastly, demonstration, through audits, of the quality of a flag should give rise to fewer controls in the context of the future port state inspection regime.

4.6.3.3.2 Amendment of the Directive on Classification Societies

The proposal intends to improve the quality of the work of these classification societies, bodies authorised by the Member States to carry out on their account inspection, checking and certification tasks relating to ships flying their flag. This approach is in line with logic of independence, competence and responsibility his bodies.

The proposal will thus relate to the strengthening of the process of inspection and certification of the safety of ships approved by the Community. This will entail the approved bodies introducing a common quality control structure with a high degree of independence. At the same time, the obligations for transparency and cooperation

incumbent on the approved bodies will be reinforced, while the criteria to be met to obtain Community approval will be rationalised.

Also, the proposal provides for the reform of the system of sanctions against societies which fail to meet the requirements, including the introduction of financial sanctions. Under the present system only the suspension or withdrawal of approval is possible. More gradual sanctions will be more effective. Lastly, the Commission's inspection powers (access on board ships and to files, including in the case of ships flying non-Community flags) will be increased.

4.6.3.3.3 Amendment of the Port State Control Directive

Controls in ports were stepped up following the Erika accident: the number of ships covered by the mandatory detailed inspections rose from 700 to nearly 4000[244]. It is now a question of taking a further step towards improving the effectiveness and quality of checks on ships in European ports. The regime in force will thus be supplemented by new types of controls, e.g. onboard insurance certificates and safety questions. The role of pilots in the early detection of possible defects on board will be stepped up. The national administrations will need to establish the organisation and resources needed to meet their obligations, with special effort focusing on the competence and continuous training of inspectors.

In addition, the sanctions imposed on substandard ships will be stepped up. Banning for repeated detentions will be extended to all categories of ships and sanctions will be even more severe in the event of repeated offences, including, where appropriate, an outright ban. At present, barely ten ships are banned from European ports: this number could rise in future to as many as 200. In addition, the Commission will publish a list of operators of substandard ships.

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[244] J. Mcconville, "International Maritime Transport : Perspectives (Routledge Advances in Maritime Studies), 2004, p. 168.

Lastly, with this proposal the Commission is initiating a thorough reform of the Port State Control regime. The existing directive is based on a target figure of 25% ships inspected by Member State, which allows a number of substandard ships to slip through the safety net and has the inconvenience that safer ships are inspected too frequently. The aim of the new inspection regime, the principles of which are laid down in the proposal, is to ensure the inspection of 100% of ships in the EU, the frequency being directly linked to the risk profile of the ships in question (for example, high-risk ships will be inspected every six months). Until the new regime is finalised, the current rules, including the national target of 25%, will remain in force.

4.6.3.3.4 An Amendment of the Traffic Monitoring Directive

Establishing a clear and precise legal framework for places of refuge is the main objective of the proposal to amend the Directive on the Community maritime traffic information and monitoring system. This legal framework provides that the Member States designate independent authorities responsible for designating the most appropriate place of refuge. These authorities will have the information they need to take their decisions, including a precise inventory of potential places of refuge along the coasts.

Figure 4.9 European Union vessel traffic monitoring

The proposal also provides for the widespread use of the SafeSeaNet data exchange network. This system, developed by the Commission and operated by the European Maritime Safety Agency will enable the maritime authorities to have precise information about movements or ships and their cargos.

Fishing continues to be one of the most dangerous sectors of activity. In order to prevent accident risks, and in particular collisions involving fishing vessels, it is proposed that automatic identification systems onboard fishing vessels over 15 metres should be made compulsory.

Lastly, the proposal contains specific provisions enabling coastal states to take appropriate measures to limit possible dangers to shipping of ice formation in certain maritime areas in the North of the EU. This is a particularly important issue given the increased risks arising from the greater volumes of oil carried in the Baltic Sea area.

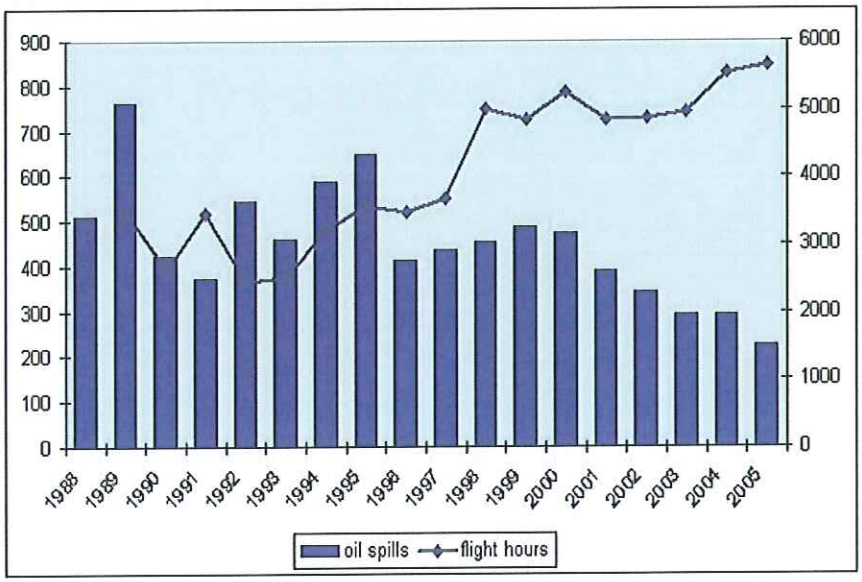

Figure 4.10 Oil is a major threat to Baltic Sea

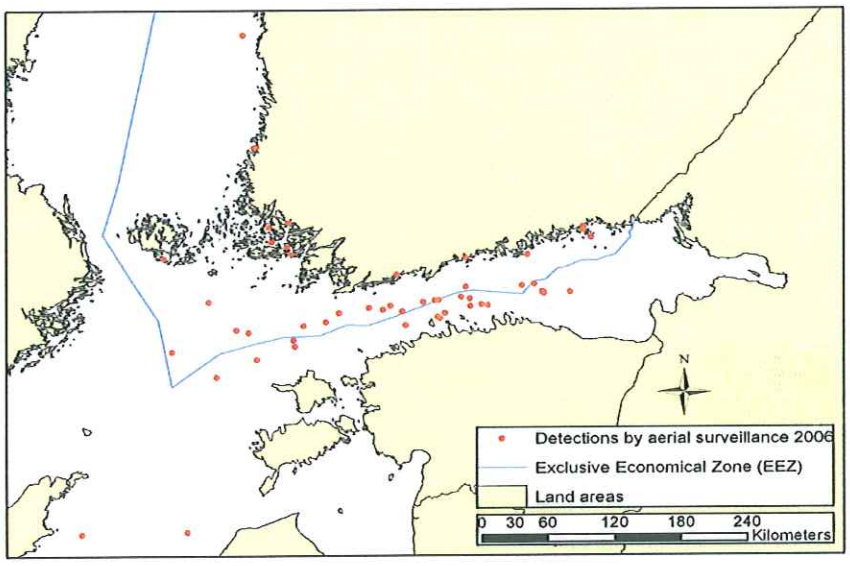

Figure 4.11 Oil spills detected by finnish surveillance aircrafts in 2006

4.6.3.3.5 A Proposal for a Directive on Accident Investigations

Along the lines of the rules governing the conduct of civil aviation investigations, the aim of this proposal is to improve maritime safety by providing for clear Community guidelines concerning technical investigations following occurrences at sea.

As in the aviation sector, the aim of technical investigations in the maritime sector is not to determine or attribute any civil or criminal liability, but to establish the circumstances and investigate the causes of occurrences at sea in order to draw all possible lessons with the view to issuing safety recommendations for prevention purposes. However, the absence of rules governing the conduct of appropriate technical investigations and feedback in terms of experience following accidents at European level is at present a significant gap in EU maritime safety policy[245].

The proposal seeks to confer European legal status to technical investigations following maritime accidents. Accordingly, the Member States should maintain or, where appropriate, establish specialist independent bodies and give technical investigators investigation powers in respect of third parties.

In addition, the proposal strives to encourage cooperation between Member States and between Member States and third countries.

4.6.3.3.6 A Regulation on Liability and Compensation for Damage of Passengers in the Event of Maritime Accidents

The purpose of the proposal is to incorporate into Community law the provisions of the 2002 Athens Convention which are applicable only to international journeys and to extend them to cover domestic maritime traffic and inland waterways. Accordingly, at EU level all ship passengers will be able to benefit from the same protection regime in the event of an accident: modernised carrier liability rules, a mandatory insurance system and a satisfactory compensation ceiling. These protection rules also apply to all passengers who have purchased their tickets in Europe, even if they travel outside Community waters and even onboard a ship flying a third-country flag[246].

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[245] Stevens H, "Transport Policy in the European Union (The European Union)",Palgrave Macmillan, 2004, p. 235

[246] Eriksson, R., "Shipping: EC maritime competition law reform – opportunities and options", 2005, Comp. L.I. p. 76

It should be noted that the Commission has proposed that the Community and its Member States should become contracting party to the Convention.

4.6.3.3.7 A Directive on the Extra-Contractual Liability of Shipowners

The Commission intends to work to ensure that shipper behave more responsible:

Firstly, it will continue to militate for the modernisation of the applicable international conventions such as the 1992 Convention on civil liability for oil pollution damage (CLC-IOPCF).

Secondly, it will propose to the Member States that they pursue a uniform approach for all other types of damage. Initially, the Member States would be invited to implement an international convention which embodies the traditional principle of limitation of liability in maritime law but sets levels of compensation by shipowners that are sufficiently high to cover most scenarios. Secondly, the Commission intends to obtain a mandate to negotiate the review of the Convention to remove the civil liability ceiling at international level (IMO). The objective is to ensure that ship owners lose their traditional right to limit their liability in the event of grave negligence.

In addition, with this proposal, the Commission is suggesting that shipowners should be obliged to take out an insurance policy or another financial security or a guarantee from a bank or similar financial institution in order to cover their liability in the event of damage to third parties pursuant to the applicable rules. The financial guarantee should cover a sufficiently high amount to guarantee satisfactory compensation for victims in all possible cases. The compulsory financial guarantee will also cover the costs of repatriation of seafarers in the event of abandonment.

4.6.3.4 The Euroepan Maritime Safety Agency (EMSA)

The Commission proposed to set up a European Maritime Safety Agency (EMSA) in the aftermath of the "Erika" accident. Regulation 1406/2002[247], establishing this Agency, was adopted by the European Parliament and the Council on 27 June 2002 and entered into force in August of the same year. In general terms EMSA provides technical and scientific assistance to the Commission in the fields of maritime safety, maritime security, prevention of pollution and response to pollution caused by ships. Its assistance is

[247] Official J. L.208, 05.08.2002, p. 1-9.

particularly relevant in the continuous process of updating and developing new legislation, monitoring its implementation and evaluating the effectiveness of the measures in place. In order to monitor the implementation of the Community acquis, the specialised staff of the Agency carries out control visits to Member States and, in specific areas, to third countries. Such visits started in 2004 and intensified over the last years.

The Agency has also the task to assist Member States with regard to the practical implementation of Community legislation, organising appropriate training activities and favouring a dissemination of best practices in the Community. Even more importantly, with the entry into force of Regulation 724/2004[248] it has to assist, upon request, with antipollution means (specialised ships and equipment) Member States affected by pollution caused by ships. In fact, in the aftermath of the "Prestige" accident in November 2002, it became obvious that additional measures had to be taken on a European level not only with regard to the prevention of pollution by ships, but also the response to such pollution. In October 2004 EMSA adopted a pollution response plan in order to initiate actions in line with its new task. The European Commission proposed a financial package of 154 million € over a period of seven years (2007-2013) to allow the European Maritime Safety Agency to finance this specific task on a multi-annual basis and to combat pollution caused by ships in a more efficient way (Regulation 2038/2006). The funds enable the Agency to make specialised anti-pollution vessels available to Member States to recover pollutants and develop satellite images to detect pollution in good time.

Key areas where EMSA has already made valuable contributions are the monitoring of classification societies, port state control and the development of ship reporting systems in Member States. Furthermore, EMSA is operating the SafeSeaNet project, a pan-European electronic information system dealing with ship movements and cargoes. In addition to the above, the intensification of control visits in Member States, the cross fertilisation of databases and the audit of seafarers training and certification systems in third countries are among the main challenges of EMSA for the next years.

[248] Official J. L.29.04.2004, p. 1-5

4.6.3.4.1 Clasification Societies

Classification societies are organisations which develop and apply technical standards to the design, construction and assessment of ships (and other marine facilities) and which carry out survey work on ships. Flag states can authorise classification societies for the inspection and statutory certification of their ships. There are more than 50 organisations worldwide which define their activities as providing marine classification, but only 13 classification societies are presently recognised by the European Union[249].

Only Member States can request EU recognition of a classification society and the enlargement of the EU may lead to additions to the EU recognised list. EU Member States can only authorize a classification society recognised by the European Union.

The main EU legislation which deals with classification societies is Directive 94/57 (as amended after the Erika disaster). This requires that each of the 13 EU recognised classification societies is assessed once every 2 years, and EMSA has been entrusted with carrying out this task on behalf of the European Commission. Based on the present list, it is necessary for EMSA to organise a number of assessments per year, which cover both head offices and selected regional offices, and also include visits to ships for the purpose of checking the performance of the classification society in question. EMSA also carries out special assessments of classification societies for which EU recognition is being requested by one or more (new) Member States.

Classification societies presently recognised by the European Union (19 June 2007):

- American Bureau of Shipping (ABS)
- Bureau Veritas (BV)
- China Classification Society (CCS)
- Det Norske Veritas (DNV)

[249] Official J. C.135/04, 19.06.2007

- Germanischer Lloyd (GL)
- Hellenic Register of Shipping (HRS, recognation for Greece, Cyprus, and Malta)
- Korean Register of Shipping (KR)
- Lloyd's Register of Shipping (LR)
- Nippon Kaiji Kyokai (NK)
- Polish Register of Shipping (PRS, recognition for Poland, Czech Republic, Cyprus, Lithuania, Malta and the Slovak Republic)
- Registro Internacional Naval (Rinave, recognition for Portugal only)
- Registro Italiano Navale (Rina)
- Russian Maritime Register of Shipping (RS)

4.6.3.4.2 Port State Control

The coastline of the European Union is many thousands of kilometres in length and contains well over 600 individual ports. These handle around 90% of EU external trade and around 35% of trade between EU countries. This involves handling 3.5 billion tonnes of goods and 350 million passengers being transported on millions of ship journeys each year[250].

Consequently, it is vital that EU maritime transport operates in a safe, secure and environmentally friendly way. In support of these goals, and in addition to the systems and procedures in place in each country, the EU has set legislation in place under port state control Directive 95/21. This aims to ensure that there is effective inspection of ships in EU ports and, thereby, to ensure that ships sailing in EU waters have been appropriately constructed and maintained.

Against this background, EMSA has been given the technical responsibility for monitoring of port state control at EU level. This involves assessing the functioning of the port state inspection systems set up by individual EU members, undertaking a comprehensive analysis of global statistics relating to vessels calling at EU ports, as well as analysis of data on individual ship inspections. The consequent risk assessment studies, and statistical research provides results which can be used to develop objectives and procedures for the continuous improvement of EU port state control performance. In addition, the Agency

[250] Stevens H, "Transport Policy in the European Union (The European Union)",Palgrave Macmillan, 2004, p.184

carries out a number of supporting tasks in this area order to ensure the overall effectiveness of the EU port state control system. For example, it:

- provides technical assistance related to European Commission participation in the various bodies dealing with port state control.
- promotes, and contributes to, collaboration between Member States in the training field, and in the development of technical practices aimed at improving the implementation of the EU port state control Directive.
- plays a role in implementing the ban on ships flying a blacklisted flag that have been repeatedly detained, and publishes and updates the list on a regular basis (EU lists of banned ships).
- provides technical assistance to the Commission in preparing an amendment to Directive 95/21, in support of the Council Conclusion of 6th December 2002, which was adopted following the Prestige casualty.

VERY HIGH RISK	Korea Democratic P. Rep.
	Albania
	Bolivia
HIGH RISK	Comoros
	Georgia
	Slovakia
	ST. Kitts and Nevis
	Syrian Arab Rep.
	Honduras
MEDIUM TO HIGH RISK	ST. Vincent and Grenadines
	Cambodia
	Lebanon
MEDIUM RISK	Brazil
	Egypt
	Belize
	Morocco

Figure 4.12 European Union black list of flags[251]

[251] Paris MOU Annual Report, 2006, effective from 01.07.2007

Table 4. 1 Choronological list of ships that were refused Access to community ports Pursuant to Article 7b of Directive 95/21/EC 19 June 1995 on PSC

Banning Date	Status*	Banning Authority	IMO No	Ship Name	Flag	FlagRank of Risk**	Ship Type	Detention Towards the Ban	Detaining Authority
17/7/2007	InForce	Portugal	7725520	Malbork	Georgia	High	Bulk Carrier	4/7/2007 26/4/2007	Portugal Slovenia
9/6/2007	InForce	Italy	7610270	Kahldoun	Syria	High	Bulk Carrier	16/6/2007 30/5/2006	Italy Italy
14/3/2007	19/7/2007	Slovenia	7312684	Haj Yamak	Georgia	Very High	Bulk Carrier	10/3/2007 31/3/2006	Slovenia Italy
19/1/2007	InForce	Italy	7614965	Trinity	Cambodia	High	Bulk Carrier	5/1/2007 12/10/005	Italy Italy
19/5/2006	InForce	UK	8018900	Hyok Sin 2	Korea	Very High	Bulk Carrier	11/4/2006 26/6/2003	UK Netherlands
21/4/2006	8/5/2006	Slovenia	7382706	European	ST. Vince. & Grena.	High	Bulk Carrier	19/4/2006 10/1/2004	Slovenia Italy
30/3/2006	22/5/2006	Spain	7622261	Khaled Muhieddin	Panama ex Georgia	Very High	Bulk Carrier	27/3/2006 15/4/2004	Spain Italy
27/3/2006	30/3/2006	Italy	7334577	Nurettin Amca	Slovakia	Very High	Bulk Carrier	26/3/2006 17/12/004	Italy Italy
9/3/2006	26/6/2006	UK	8105260	Navision Laker	Panama	Medium	Bulk Carrier	21/2//006 19/5/2004	UK /Spain Spain
18/2/2006	InForce	Italy	8400311	TimiosSta. ExSeaman	PanamaSt.Vince.&Gren	High	Bulk Carrier	23/1/2006 8/10/2005	Italy Canada
27/12/005	InForce	Portugal	7029421	Abdulrahman	Panama ex Korea	Very High	Bulk Carrier	16/12/005 11/4/2003	Portugal Greece
20/12/005	2/1/2006	Spain	7107742	Agios Isidoros	ST. Vince.& Grena.	High	Oil Tanker	15/12/005 11/3/2005	Spain Italy
9/12/2005	6/3/2006	Italy	7433335	Hatice Akar	Panama ex Turkey	High	Bulk Carrier	6/12/2005 20/4/2004	Italy Italy
30/11/2005	InForce	Germany	8014203	Oil Ambassador	Panama	Medium	Oil Tanker	29/11/005 31/8/2005	German Ger./UK
8/11/2005	InForce	Belgium	7501807	Mai-S	Syria	Very High	Bulk Carrier	21/10/005 14/11/002	Belgium Belgium
27/10/005	InForce	Slovenia	7614147	Muscat Ex Heidi II	St. Kitts / Nevis	Very High	Bulk Carrier	3/10/2005 14/3/2003	Slov./Spain Portugal
18/10/005	1/12/2005	Italy	7614965	Trinity	Cambodia	Very High	Bulk Carrier	12/10/005 28/7/2003	Italy Italy
13/10/005	13/3/2006	Belgium	7511199	Seba M	Lebanon	Very High	Bulk Carrier	16/9/2005 6/3/2004	Belgium Italy / Italy
26/7/2005	20/1/2006	Italy	7366128	Ocean Sprit I Ex Eurocarri	Panama ex Cambodia	Very High	Bulk Carrier	22/7/2005 7/1/2005	Italy Slovenia
7/7/2005	7/3/2006	Netherlands	7433634	Vorios Ipiros Hellas	Panama	Medium	Bulk Carrier	7/7/2005 5/9/2003	Neth.Russia/Neth.
28/6/2005	15/7/2005	Italy	8011452	Caribbean Trader	Panama	Medium	Chemical Tanker	27/6/2005 23/6/2004	Italy/Can./Belg.
30/5/2005	InForce	Greece	7433323	Derya 2	Panama ex Korea	Very High	Bulk Carrier	11/5/2005 20/3/2003	Greece Greece
22/4/2005	2/9/2005	Belgium	7389845	Burdur	Turkey	Very High	Bulk Carrier	14/4/2005 26/12/002	Belgium Spain
24/2/2005	15/7/2005	UK	7507148	Swift Superi Ex Balaban I	Panama ex Turkey	Very High	Bulk Carrier	11/2/2005 11/11/003	UK Spain

Table 4. 2 List of the 17 vessels banned from European Union ports[252]

Name of Vessel	IMO	Type of Vessel	Flag
Buket	7427142	Chemical	Panama
Hajji Amnah	7501833	Bulk	Syria
Andra	7336642	Chemical	Cambodia
Lady fox	7610098	Bulk	St. Vincen& Grenadines
Derin Deniz	6905446	Ro-Ro Passanger	Turkey
Hoggar	7046821	Ro-Ro Passanger	Algeria
Hermes	7420326	Oil Tanker	St. Vincen& Grenadines
Long Guan	7625720	Bulk	St. Vincen& Grenadines
Mediternean Star	7320370	Chemical	Panama
Burdur	7389845	Bulk	Turkey
Derya 2	7433323	Bulk	Cambodia
Varios Ipıros Hellas	7433634	Bulk	Panama
Eurocarrier	7366128	Bulk	Cambodia
Seba M	7511199	Bulk	Lebonon
Trinity	7614965	Bulk	Cambodia
Heidi II	7614147	Bulk	Georgia
Mai - S	7501807	Bulk	Syria

4.6.4 International Standarts for Pollution Prevention and Shipboard Living and Working Conditions

Council Directive 95/21/EC[253] of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)[254].

The purpose of this Directive is to improve maritime safety in Community waters by attempting to ban substandard shipping from them.

This Directive applies to all merchant shipping and crews using a seaport of a Member State or offshore terminal or anchored off such a port or installation.

Member States are obliged to establish and maintain national maritime administrations ("competent authorities") for the inspection of ships in their ports or in the waters under their jurisdiction.

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[252] EMSA
[253] Official J. L.291, 14.11.1996, p. 42
[254] Official J. L.157, 07.07.1995, p. 1-19

Each Member State is obliged to inspect at least 25 % of the ships flying other countries' flags which enter its ports. Vessels which have already been inspected within the previous six months are exempt.

Enhanced controls must be carried out on:

- oil tankers within five years or less of the date of phasing out;
- bulk carriers older than 12 years of age;
- passenger ships;
- gas and chemical tankers, over ten years old counting from the date of construction shown on the ship's safety certificates.7. An obligation is placed on the Member States to ensure that any deficiencies revealed in the course of the inspection are rectified. Conditions warranting detention of the ship are laid down.

Member States are obliged to ensure that any deficiencies revealed in the course of the inspection are rectified.

In the event of follow-up of inspections and detention, Member States must give notification of movements, measures taken and penalties imposed in the event of refusal to comply with the competent authorities' requests (refusal of access to any port within the Community).

Pilots and port authorities are obliged to report any deficiencies which they detect.Member States are obliged to ensure that their competent authorities cooperate with their counterparts in other Member States.

Each competent authority is obliged to publish, once every quarter, details of the number of detentions ordered and rules on the information to be provided.

Owners or operators of deficient vessels warranting detention are obliged to pay a fee covering the reinspection costs.

Member States are obliged to supply each year details of the number of surveyors working on their behalf and of the number of ships entering their ports.

A regulatory committee has been set up to assist the Commission.

Directive 98/25/EC provides for an applicable procedure in the absence of ISM certificates. (International Safety Management Code for ship operation and pollution prevention).

4.6.4.1 Directive 98/25/EC[255]

This Directive aims to update Directive 95/21/EC in order to take account of recent changes made to MARPOL (Convention for the Prevention of Pollution from Ships) and SOLAS (International Convention for the Safety of Life at Sea) and the Convention on standards of training, certification and watchkeeping for seafarers (STCW 1978).

4.6.4.2 Directive 98/42EC[256]

This legislative measure amends Article 5.2 of Directive 95/21/EC concerning the selection of ships for inspection by giving priority to ships referred to in Annex I, part I.

4.6.4.3 Directive 1999/97/EC[257]

This Directive takes account of amendments to conventions, protocols, codes and resolutions of the International Maritime Organisation (IMO) and developments within the Paris Memorandum of Understanding. Parallel to this, Member States must take all necessary measures to remove any legal obstacle to the publication of the list of ships inspected, detained or being refused access to any port of the Community. The Members States and the Commission must promote methods for making information available more widely and more promptly.

4.6.4.4 Directive 2001/106/EC[258]

The objective of the Directive is to make compulsory rather than discretionary the system of inspections of certain potentially dangerous ships, tighten up measures relating to manifestly substandard ships and ensure more effective implementation of Directive 95/21/EC.

4.6.4.5 Directive 2002/84/EC[259]

This Directive aims to improve the implementation of Community legislation on maritime safety, prevention of pollution from ships and shipboard living and working conditions.

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[255] Official J. L.133, 07.05.1998, p. 19-20
[256] Official J. L.184, 27.06.1998, p. 40-46
[257] Official J. L.331, 23.12.1999, p. 67-70
[258] Official J. L.19, 22.01.2002, p. 17-31
[259] Official J. L.324, 29.11.2002, p. 53-58

4.6.5 Loading and Unloading of Bulk Carriers

Directive 2001/96/EC[260] of the European Parliament and of the Council of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers.

The objective of this Directive is to provide a Community legal framework for harmonised implementation of the relevant provisions of the code of practice for the safe loading and unloading of bulk carriers (the BLU - "Bulk, Loading and Unloading" - code) adopted by the International Maritime Organisation (IMO) in December 1997.

This Directive applies to:

- all bulk carriers, irrespective of their flag, calling at a terminal for the loading or unloading of solid bulk cargoes; and
- all terminals in the Member States visited by bulk carriers falling under the scope of the Directive.

The Directive does not apply to facilities visited by bulk carriers only in exceptional circumstances.

To this end the Directive lists a series of requirements regarding the suitability of bulk carriers. Terminal operators must check that bulk carriers calling at their terminal to load or unload solid bulk cargoes meet the suitability requirements.

The Directive requires the terminals themselves to meet the following suitability requirements:

- appoint a representative responsible for the loading and unloading of bulk carriers calling at the terminal;
- make available to bulk carriers calling at the terminal information manuals containing all the information needed to facilitate the cargo-handling operations at the terminal; and
- set up and maintain a quality management system based on the ISO 9001:2000 standards.

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[260] Official J. L.13, 16.01.2002, p. 9-20

A transitional period of three years from the entry into force of the Directive is granted to set up the quality management system plus one more year to obtain certification of the system.

The Directive spells out the responsibilities and duties of the master of the bulk carrier and of the terminal representative. It also lays down the procedures to be followed by the master and the terminal representative prior to and during loading or unloading operations, placing particular emphasis on the need for effective communication and cooperation between ship and terminal.

A loading or unloading plan must be agreed and the responsibilities of the master and of the terminal representative must be clearly defined.

The responsibilities of the master are:

- to ensure safe loading and unloading of the bulk carrier;
- to provide the terminal, well in advance of the ship's estimated time of arrival there, with the information mentioned in Annex III to the Directive;
- to make sure that he has received the cargo information required by the 1974 SOLAS Convention (International Convention for the Safety of Life at Sea).

The responsibilities of the terminal representative are:

- to provide the master with the information mentioned in Annex V to the Directive;
- to make sure that the master has been advised as early as possible of the information contained in the cargo declaration form;
- to notify the master and the port State control authority without delay of any apparent deficiencies noted on board the bulk carrier which could endanger safety.

The Directive recognises the principle of intervention by the competent authorities in the Member States whenever the cargo-handling operations give rise to situations which are likely to pose a threat to ship safety. However, the Directive limits intervention by the authorities to cases of this type where the master and the terminal representative cannot reach agreement on the action to be taken, since in every case primary responsibility for safe loading and unloading lies with the master.

Nevertheless, where a ship has sustained damage impairing its structural integrity, the Directive provides for action by the port State control authorities in order to decide whether it is necessary to proceed with repairs, in close consultation with the administration of the flag State or with the organisation recognised by it and acting on its

behalf. If necessary or desirable, the port State control authorities have the option of calling for a technical assessment by an organisation recognised by the European Union in order to reach a decision on the need for emergency repairs.

The Directive also calls for the Member States to take the necessary measures to implement the Directive and to report on this matter every three years to enable the Commission to collect and examine the information that it needs in order to evaluate implementation of the Directive.

Finally, the IMO must be notified of the adoption of the Directive, in accordance with Resolution A.797(19) of the IMO Assembly, which requested confirmation that loading and unloading terminals for solid bulk cargoes comply with the IMO codes and recommendations on ship/shore cooperation.

4.6.6 International Safety Management (ISM) Code

Regulation (EC) No 336/2006[261] of the European Parliament and of the Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95[262].

The purpose of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code) is to establish a management system in shipping companies to ensure the safe operation of ships and the prevention of pollution. The Code was adopted by the International Maritime Organisation (IMO) and reproduced in section of the International Convention for the Safety of Life at Sea (SOLAS). Implementation of the ISM Code is obligatory in all the Member States.

[261] Official J. L.64, 04.03.2006, p. 1-36
[262] Official J. L.320, 30.12.1995, p. 14-24

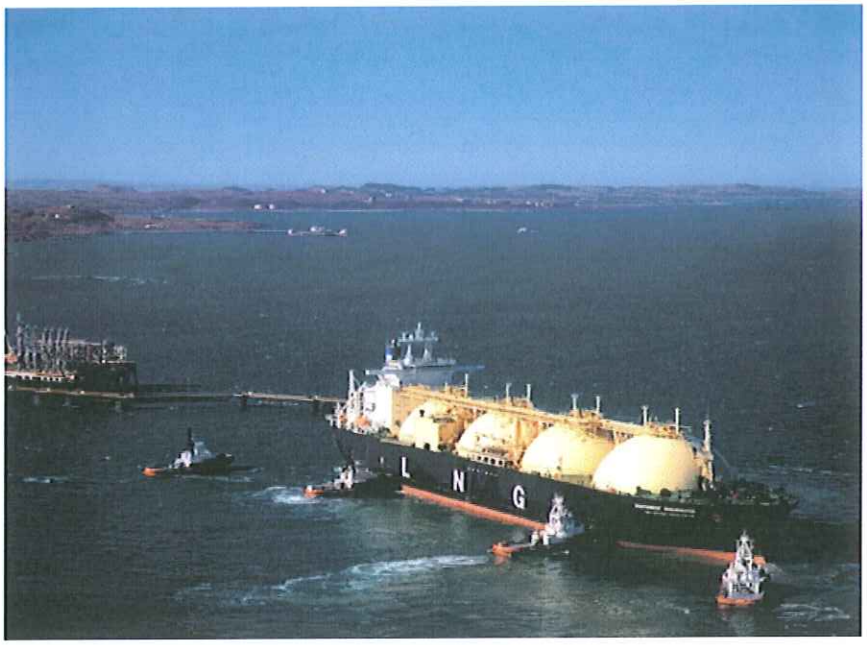

Figure 4.13 LPG Tanker manoeuvreting by Tug Boats

The Regulation ensures that the Code is implemented correctly, strictly and uniformly in all the Member States in order to enhance safety management and safe operation and to prevent pollution. It applies to:

- cargo ships flying the flag of a Member State;
- passenger ships flying the flag of a Member State and engaged on national or international voyages;
- cargo ships engaged on domestic voyages, whatever their flag;
- mobile offshore drilling units operating under the authority of a Member State.

The Regulation does not apply to:

- warships or troopships owned by a Member State and used only on government non-commercial service;
- ships not propelled by mechanical means, wooden ships of primitive build, yachts and pleasure craft, unless they are carrying more than 12 passengers for commercial purposes;
- fishing vessels;
- cargo ships and mobile offshore drilling units of less than 500 gross tonnage;
- passenger ships, other than ro-ro passenger ferries, in sea areas of Class C and D as defined in Article 4 of Directive 98/18/EC.

4.6.7 Safety Management of Ro-Ro Passenger Vessels

Council Regulation (EC) No 3051/95[263] of 8 December 1995 on the safety management of Ro-Ro passenger vessels.

This Regulation lays down the necessary provisions for the mandatory early application (no later than 1 July 1996) of the international safety management (ISM) Code to all ro-ro ferries operating regular services to or from ports in the European Community.

Figure 4.14 Twin Screw Ro-Ro passenger/car ferry

The purpose of the Regulation, following the sinking of the "Estonia", was to improve safety at sea and prevention of marine pollution through:

- the establishment and maintenance by companies of adequate safety management systems on board and on land;
- control of these systems by the administrations of the flag state and the port.

The regulation applies to all companies operating at least one ro-ro ferry on a regular service to or from ports in the Community, regardless of flag.

The companies must comply with the provisions of the ISM Code as they stand in the annex, but as if they were mandatory. Fulfilment of this obligation will be an essential condition for authorisation to operate ro-ro ferries on a regular service to or from ports in the Community. Companies operating one or more ro-ro ferries on a regular service in

[263] Official J. L.320, 30.12.1995, p. 14-24

sheltered waters between ports situated in the same Member State may defer compliance with the provisions of this regulation until 1 July 1997.

Flag states are under an obligation to certify compliance with the annex by companies operating ro-ro ferries flying their flag (safety management certificate). After consulting the administration of the flag state, Member States must issue a document of compliance for companies which have their principal place of business on their territory. Validity of the certificate and the document is limited to five years. Obligation to accept certificates issued by the authorities of any other Member State. Obligation to recognise the documents of compliance and the safety management certificates issued by the authorities of third countries or recognised organisations acting on their behalf where they guarantee compliance with the provisions of this regulation.

Member States are under an obligation to ensure compliance with the provisions of this regulation by all companies providing regular ro-ro ferry services to and from their ports.

Even where a company holds a document of compliance, a Member State may, for reasons of serious danger to safety or the environment, suspend the operation of the service and bring the matter before the Commission.

The Commission, assisted by an advisory committee, may amend the definition of certain terms and take decisions regarding suspensions of authorisations by Member States.

There are three amending acts. Regulation (EC) No179/98[264] (no later than 1 july 1998), Regulation (EC) No1970/2002[265], and Regulation (EC) No 2099/2002[266].

4.6.8 System of Mandotory Surveys for Regular Ro-Ro Ferry and High-Speed Passenger Craft Services

Council Directive 1999/35/EEC[267] of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services.

This Directive aims to improve the safety of maritime passenger transport by ensuring compliance with safety requirements by means of a system of mandatory surveys and to provide the right for Member States to conduct, participate in or cooperate in any investigation of maritime casualties or incidents.

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[264] Official J. L.19, 24.01.1998, p. 35-46
[265] Official J. L.302, 06.11.2002, p. 3-27
[266] Official J. L.324, 29.11.2002, p. 1-5
[267] Official J. L.138, 01.06.1999, p. 1-19

The Directive applies to all ro-ro ferries and high-speed passenger craft operating to or from a port of a Member State on a regular service, regardless of their flag, when engaged on domestic or international voyages in sea areas of Class A. Member States may extend the scope of application to domestic voyages in other sea areas.

Figure 4. 15 High-Speed passenger ferry

Figure 4.16 Ro-Ro ferry

The purpose of the Directive is to:

- define a system of mandatory surveys capable of better ensuring the safe operation of regular ro-ro ferry and high-speed passenger craft services to or from ports in the Member States;
- provide the right for Member States to conduct, participate in or cooperate with any investigation of maritime casualties on these services.

A service is considered a regular service if it consists of a series of crossings operated so as to serve traffic between the same two or more ports or a series of crossings from and to the same port without intermediate calls, either:

- according to a published timetable or
- with crossings so regular or frequent that they constitute a recognisable systematic series.

The Directive provides that, prior to the start of operation of a regular ro-ro ferry or high-speed passenger craft service, the Member States must check that:

- companies operating or intending to operate such ferries or craft:

- take the measures necessary for the application of the specific requirements listed in Annex1 (right of the master to take the necessary decisions, log of navigational activities and incidents, reporting of damage to shell doors, providing elderly and disabled persons on board the craft with general information about the services to assist them, etc);
- agree in advance that the host State or any other Member State particularly concerned may carry out, participate fully in or cooperate in any investigation of a marine casualty or incident and provide them with access to the information retrieved from the VDR (voyage data recorder) of any of their vessels involved in a casualty;

- for vessels flying a flag other than that of a Member State, the administration of that flag State has accepted the company's commitment to fulfil the requirements of this Directive;

- ro-ro ferries and high-speed passenger craft meet the following requirements:

- they must carry valid certificates issued by the administration of the flag State; - they must be surveyed for the issue of certificates in accordance with the provisions of the IMO;

- they must comply with the classification standards specified for the construction and maintenance of their hull, machinery and electrical and control installation;
- they must be fitted with a voyage date recorder (VDR) for the purpose of providing information on any casualty occurring.
- they must comply with the specific stability requirements adopted at regional level, provided that those requirements do not go beyond those specified in the Annex to Resolution 14 of the 1995 SOLAS Conference.

The Directive provides that each host State must carry out an initial specific survey in accordance with the provisions laid down in Annexes 1 and 3 so as to satisfy itself that the ro-ro ferry or high-speed passenger craft fulfils all the conditions to operate a safe regular service to or from one or more of its ports.

This survey may be carried out:

- either before the entry into operation of the ship or craft on the regular service;
- or, if the ship or craft is already operating on regular services, within 12 months of the date of implementation of the Directive.

In addition, each host State must, once in every 12-month period, carry out:
- a specific survey, in accordance with Annex III, and
- a survey during a regular service covering enough items listed in Annexes I, III and V in order to satisfy the host State that the ferry or craft continues to fulfil all the necessary requirements for safe operation.

Specific surveys are also carried out whenever the ro-ro ferry or high-speed passenger craft undergoes major repairs, alterations and modifications, when there is a change in management or flag, or a transfer of class.

Ro-ro ferries and high-speed passenger craft that have been subject to the specific surveys to the satisfaction of the host States involved are exempted from expanded inspections as provided for in Council Directive 95/21/EC.

If deficiencies are established in the course of such surveys, the host States must require the company to take the necessary measures to rectify them, following which the host States concerned verify that the rectification has been carried out to their full satisfaction. If this is not the case, they must prevent the ferry or craft from operating. The Directive provides for a right of a company to appeal against a decision to prevent operation.

The Directive makes provision for substantially interested Member States to take part in any investigation concerning maritime casualties involving a ro-ro ferry or a high-speed passenger craft operating a regular service to or from a Community port.

The Directive makes provision for several accompanying measures, including the following:

- collaboration between the host State and the administration of the flag State concerned regarding the suitability of exemptions;
- establishment of shore-based navigational guidance systems;
- communication to the Commission of a copy of the survey reports;
- ability to implement an integrated system of contingency planning for shipboard emergencies;
- establishment of operating restrictions.

The Commission will compile a database on the basis of the inspection reports provided by the Member States. The arrangements for access to the database will be decided in accordance with the procedure laid down in the Directive.

The Member States will inform third countries who bear either flag State or host State responsibilities of the requirements imposed on any company providing a regular service to or from a Community port.

The Member States will lay down the system of penalties for infringing the national provisions adopted pursuant to the Directive and take all the measures necessary to ensure that those penalties are applied.

Directive 2002/84/EC[268] has allowed the system to be adapted and subsequent update to be made easier, subject to the changing nature of the main conventions, resolutions or other agreements which may have entered into force internationally.

4.6.9 Acceleretated Phasing-in of Double-hull Oil Tankers

Regulation (EC) No 417/2002[269] of the European Parliament and of the Council of 18 February 2002 on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94[270].

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[268] Official J. L.324, 29.11.2002, p. 53-58
[269] Official J. L.64, 07.03.2002, p. 1-5
[270] Official J. L.319, 12.12.1994, p. 1-6

This Regulation speeds up the replacement of single hull oil tankers by double hull or design equivalent oil tankers.

Figure 4.17 Building of double-hull tanker

This proposal is part of the communication on the safety of the seaborne oil trade which the Commission adopted following the oil pollution caused by the loss of the oil tanker Erika in December 1999.

Figure 4.18 The oil spilled from the Petron-chartered single hull vessel oil tanker in Nueva Valencia, Guimaras Island Philippines which sank on Friday 11th August 2006 spilling 2.1 million litres of fuel oil causing a huge slick.

Most oil tankers are currently of "single hull" design. In such vessels, oil in the cargo tanks is separated from the seawater only by a bottom and a side plate. Should this plate be damaged as a result of collision or stranding, the contents of the cargo tanks risk spilling into the sea and causing serious pollution. An effective way of avoiding this risk is to surround the cargo tanks with a second internal plate at a sufficient distance from the external plate. This design, known as a "double hull", protects cargo tanks against damage and thus reduces the risk of pollution.

Following the *Exxon Valdez* accident in 1989, the United States, dissatisfied with the ineffectiveness of the international standards on the prevention of pollution from ships, adopted an Oil Pollution Act in 1990 (OPA 90). With this Act, the United States unilaterally imposed double hull requirements on both new and existing oil tankers, set according to vessel age limits (between 23 and 30 years, as from 2005) and according to deadlines (2010 and 2015) for the phasing out of single-hull oil tankers[271].

Faced with this unilateral measure on the part of the Americans, the International Maritime Organisation had to take action and established double hull standards in 1992 in the International Convention for the Prevention of Pollution from Ships (MARPOL). This Convention requires all oil tankers with a deadweight tonnage (DWT) of 600 tonnes DWT or more delivered as from July 1996 to be constructed with a double hull or an equivalent design. There are therefore no longer any single hull tankers of this size that have been constructed after this date. For single hull tankers with a deadweight tonnage of 20 000 tonnes DWT or more, and delivered before 6 July 1996, the International Convention requires that they comply with the double-hull standards at the latest by the time they are 25 or 30 years old, depending on whether or not they have segregated ballast tanks.

The purpose of segregated ballast tanks is to cut down the risk of operational pollution by ensuring that the ballast water will never be in contact with the oil. What is more, segregated ballast tanks are located for the purposes of protection precisely where the impact of a stranding or a collision is likely to be most serious.

Given that it is almost impossible to transform a single-hull oil tanker into a double hull tanker and that the age limits specified are close to the end of the commercial life of a vessel, both the American system and the MARPOL Convention are leading to the phasing-out of single-hull oil tankers. Nevertheless, the differences between the American

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[271] Gibson A., Donovan A., "The Abandoned Ocean: A History of United States Maritime Policy", University of South Carolina, 1th Edition, 2001, p. 281

system and the international system will mean that, as from 2005, single hull oil tankers banned from US waters on account of their age will begin to operate in other parts of the world, including the EU, and will increase the risk of pollution in the areas concerned.

The Commission is concerned about the situation described above as figures show increasing accident rates for the older vessels. It therefore believes that an appropriate Community response is required, to take effect before 2005, an important deadline since it is the date from which single-hull oil tankers banned from US waters will start to be used in European waters.

Following the loss of the oil tanker Prestige (November 2002), the Commission speeded up the phasing-out of single hull tankers carrying the heaviest grades of oil in Community ports, terminals and anchorage areas.

The purpose of this Regulation is to reduce the risk of accidental oil pollution in European waters by speeding up the phasing-in of double hulls[272].

The Regulation applies to all tankers of 5 000 tonnes deadweight or above:

- entering or leaving a port or offshore terminal or anchoring in an area under the jurisdiction of a Member State, irrespective of their flag;
- flying the flag of a Member State.

The heavy grades of oil concerned are heavy fuel oil, crude oil, used oils, bitumen and tar.

The MARPOL Convention distinguishes between three categories of oil tanker[273]:

- Category 1: an oil tanker of 20 000 tons deadweight or more carrying crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo, and of 30 000 tons deadweight or more carrying oil other than the above, which does not comply with the requirements for new oil tankers as defined in Annex I of MARPOL.
- Category 2: an oil tanker of 20 000 tons deadweight or more carrying crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo, and of 30 000 tons deadweight or more carrying oil other than the above, which complies with the requirements for new oil tankers as defined in Annex I of MARPOL.
- Category 3: an oil tanker of 5 000 tons deadweight ore more but less than that in categories 1 and 2.

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[272] Selkou E., Roe M., "Globalisation , Policy and Shipping: Fordism, Post-Fordism and The European Maritime Sector (Transport Economics, Management and Policy Series), 2004, p. 168

[273] The 2003 Amendments of Marpol Convention,
Its available to see at www.imo.org/Conventions

No oil tanker is allowed to operate under the flag of a Member State, nor is any oil tanker, irrespective of its flag, allowed to enter into ports or offshore terminals under the jurisdiction of a Member State after the anniversary of the date of delivery of the ship in the year specified below, unless such tanker is a double hull oil tanker[274]:

- For category 1 oil tankers:
  - 2003 for ships delivered in 1980 or earlier;
  - 2004 for ships delivered in 1981;
  - 2005 for ships delivered in 1982 or later.
- For category 2 and 3 oil tankers:
  - 2003 for ships delivered in 1975 or earlier;
  - 2004 for ships delivered in 1976;
  - 2005 for ships delivered in 1977;
  - 2006 for ships delivered in 1978 and 1979;
  - 2007 for ships delivered in 1980 and 1981;
  - 2008 for ships delivered in 1982;
  - 2009 for ships delivered in 1983;
  - 2010 for ships delivered in 1984 or later.
- No oil tanker carrying heavy grades of oil, irrespective of its flag, may be allowed to enter or leave ports or offshore terminals or to anchor in areas under the jurisdiction of a Member State, unless such tanker is a double hull oil tanker. Besides this, no oil tanker transporting heavy petroleum products is authorised to operate under the flag of a Member State unless it is a double hulled tanker.

The Condition Assessment Scheme (CAS) will be applied to all types of oil tanker having reached 15 years of age by 2005. The CAS is a complementary scheme of enhanced surveys specially designed to detect structural weaknesses in single hull oil tankers.

The Commission is equally aware of the fact that the gradual phasing-out of single hull oil tankers in favour of those with a double hull will have an impact on oil product prices. A study on OPA 90 published in 1998 by the National Research Council of the United States concluded that the impact of this measure on the cost of oil products could be estimated at around 10 US cents per barrel, or a tenth of the cost of the transport, which itself represents only 5 to 10% of the total cost of the product.

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[274] Its available to see at www.imo.org/Conventions

The ultimate impact on the price of such oil products at delivery will therefore be less than 1%. Compared with the cost of repairing the consequences of serious oil pollution such as that caused by an accident like the Erika or the Prestige, the Commission believes that this additional cost is more than made up for by the advantages if, with such a measure, such disasters can be prevented from occurring in European waters. The Commission believes that this is a reasonable price to pay to reduce the risk of pollution.

4.6.9.1 New International Rules

The IMO has amended the Marpol Convention in order to apply arrangements similar to those of the EU to all oil tankers worldwide. The new international provisions amending Annex I to the Marpol Convention 73/78 lay down:

- the obligation for the most hazardous grades of oil to be carried only in double hull oil tankers as of 4 April 2005 at the latest;
- an accelerated programme of phasing-out for single hull oil tankers which cannot remain in service beyond 2010;
- the expansion and early implementation of the special inspection arrangements for single hull oil tankers over 15 years old.

There are three amending acts : Regulation(EC) No1726/2003[275], Regulation(EC) No 2172/2004[276], and Regulation(EC) No 457/2007[277].

4.6.10 Rules and Standards for Passenger Ships

Council Directive 98/18/EC[278] of 17 March 1998 on safety rules and standards for passender ships.

The aim of this Directive is to establish a harmonised set of safety rules and standards for passenger ships engaged on domestic voyages and to lay down procedures for international negotiation with a view to harmonising the rules for passenger ships engaged on international voyages.

This Directive was prompted by awareness, following the shipping accidents of recent years, of the need to improve the safety of maritime passenger transport.

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[275] Official J. L.249, 01.10.2003, p. 1-3
[276] Official J. L.371, 18.12.2004, p. 26-27
[277] Official J. L.113, 30.04.2007, p. 1-2
[278] Official J. L.113, 12.05.2000, p. 55

Figure 4.19 Passenger ship

The Directive applies to:

- new passenger ships;
- existing passenger ships of 24 metres in length and above;
- high-speed passenger craft,

regardless of their flag, when engaged on domestic voyages.

It does not apply to passenger ships which are:

- ships of war and troopships;
- ships not propelled by mechanical means;
- ships constructed in material other than steel or equivalent and not covered by the international standards concerning high-speed craft;
- wooden ships of primitive build;
- historical ships;
- pleasure yachts;
- ships exclusively engaged in port areas.

Passenger ships are divided into four classes A, B, C and D according to the sea area and distance from the coast within which they operate. A list of these sea areas is to be published in the Official Journal of the European Union.

High-speed passenger craft are also divided into several classes in accordance with the HSC Code ("International Code for Safety of High Speed Craft" adopted by the International Maritime Organisation - IMO)[279].

All passenger ships and high speed passenger craft engaged on domestic voyages must comply with the rules laid down in the Directive.

Member States may not impair the freedom of operation of ships and craft complying with the requirements of the Directive and must recognise the certificates, permits and declarations of compliance issued by other Member States pursuant to the Directive.

Member States may, in their capacity as host State, inspect ships and craft engaged on domestic voyages and may audit their documentation, in accordance with Directive 95/21/EC.

The Directive lays down all the general safety requirements to be applied to new and existing passenger ships and to high speed passenger craft. These are:

- rules common to all classes of new and existing passenger ships;
- rules applicable to new passenger ships;
- rules applicable to existing passenger ships;
- rules applicable to high-speed passenger craft.

The Directive sets out additional safety requirements, equivalents, exemptions and safeguard measures which may be implemented provided the Commission is given prior notice:

- additional safety requirements: under certain circumstances, additional safety measures may be adopted in view of local conditions;
- equivalents: under certain circumstances, a Member State may allow equivalents provided they are at least as effective as the regulations laid down in the Directive;
- exemptions: under certain circumstances, Member States may grant exemptions under the following operational limitations: smaller significant wave height, restricted year period, voyages only during daylight hours or under suitable weather conditions and restricted trip duration;
- safeguard measures: possibility of suspending the operation of a ship in the event of serious danger to safety of life, property or the environment.

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[279] Selkou E., Roe M., "Globalisation , Policy and Shipping: Fordism, Post-Fordism and The European Maritime Sector (Transport Economics, Management and Policy Series), 2004, p. 203

The Commission may amend the Directive in order to take account of developments at international level with regard to safety rules, particularly within the IMO.

The Commission is assisted by the committee set up by Directive 93/75/EEC[280].

New and existing passenger ships are subject to inspections to be carried out by surveyors from the administration of the flag State, a "recognised organisation" or the Member State authorised by the flag State to carry out surveys.

New and existing passenger ships must be provided with a safety certificate issued by the Administration of the flag State for a period of no more than one year and attesting to their conformity with the provisions of the Directive.

A safety certificate and an operating permit must also be issued to high-speed passenger craft complying with the requirements of the International Code for Safety of High Speed Craft.

The Directive sets up a negotiating mandate for the Commission within IMO, with a view to harmonising the regulations of the SOLAS Convention (international convention of 1974 on the safety of life at sea) applicable to passenger ships engaged on international voyages and making compulsory the application, within the IMO framework, of the principles laid down in MSC (IMO Maritime Safety Committee) Circular 606 on port State concurrence with SOLAS exemptions.

4.6.10.1 Directive 2003/24EC[281]

The purpose of this Directive is to tighten the safety rules and standards for passenger ships by establishing a uniform level of safety of life and property on new and existing passenger ships and high-speed passenger craft engaged on domestic voyages.

At the same time, the Directive lays down procedures for international negotiation to harmonise the rules for passenger ships engaged on international voyages. Directive 2003/24/EC requires appropriate measures to be taken to enable persons with reduced mobility to have safe access to passenger ships and high-speed passenger craft engaged on domestic voyages in the Member States.

Each Member State must compile and update a list of sea areas under its jurisdiction, delimiting the zones in which the classes of ships operate all year round and those in which their operation is limited to a specific period.

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[280] Ofiicial J. L.247, 05.10.1993, p. 19-27

[281] Official J. L.123, 17.05.2003, p. 18-21

4.6.11 Satellite-based Vessel Monitoring System

Commission Regulation (EC) No 2244/2003[282] of 18 December 2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems.

The European Union (EU) has been at the forefront of the move to use satellite to monitor fishing activities. In this connection, the basic function of VMS (satellite-based vessel monitoring system) is to provide reports of the location of a vessel at regular intervals. Electronic devices, or "blue boxes", are installed on board vessels. These devices automatically send data to a satellite system which transmits them to a ground station which, in turn, sends them to the fisheries monitoring centre (FMC).

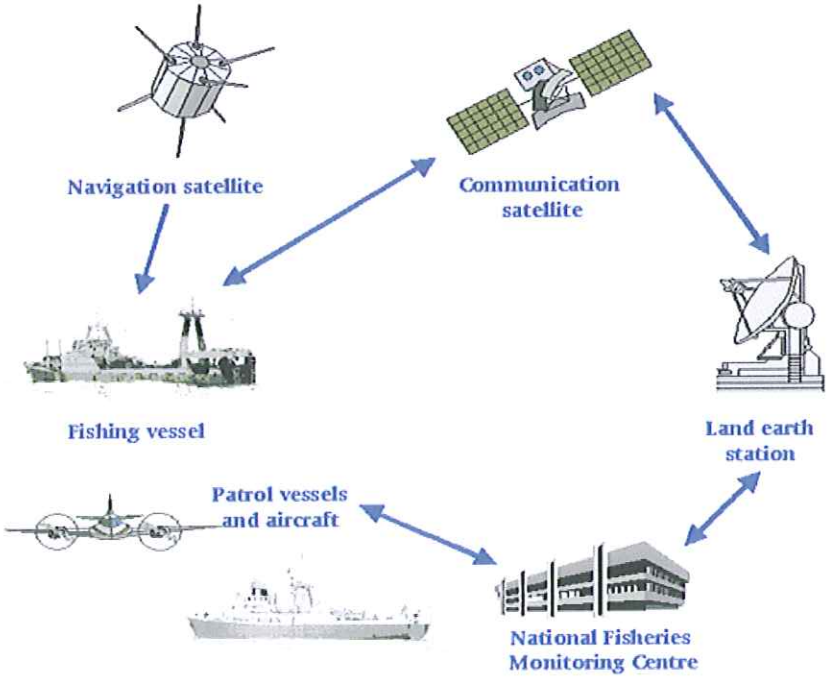

Figure 4.20 VMS - Vessel Monitoring System

The basic function of VMS is to provide reports of the location of a vessel at regular intervals. VMS tracks the vessel movements and may provide information on its speed and course. The monitoring authorities can check a range of factors including whether the vessel :

- operates in an area where fishing activities are not allowed;
- operates in the Exclusive Economic Zone of another Member States or third countries or waters under responsibility of a Regional Fisheries Management Organisation;

[282] Official J. L.333, 20.12.2003, p. 17-27

- holds the necessary licences and quotas to fish in the relevant area.

VMS does not replace existing monitoring methods but it makes them more effective by providing the authorities with the location of vessels suspected of having committed infringements thus enabling inspectors on patrol vessels to carry out checks at sea. In addition, if suspected infringements are not immediately detected, irregularities can still be spotted later by cross-checking data.

Regulation (EC) No 2371/2002[283] states that fishing vessels are prohibited from engaging in fishing activities unless they have installed on board a device which allows them to be detected and identified by remote monitoring systems.

The present Regulation establishes a satellite-based Vessel Monitoring System (VMS) which applies to:

- fishing vessels exceeding 18 metres in length, as from 1 January 2004; and
- fishing vessels exceeding 15 metres in length as from 1 January 2005.

Fishing vessels operating exclusively inside the baselines of Member States are not subject to this requirement.

Member States are to operate Fisheries Monitoring Centres (FMC). The FMC of a Member State is to monitor:

- the fishing vessels flying the flag of that Member State, regardless of the waters or the port they are in;
- Community fishing vessels flying the flag of other Member States;
- third-country fishing vessels during the time they are in the waters under the sovereignty or the jurisdiction of that Member State.

All Community fishing vessels subject to VMS must have a satellite-tracking device installed on board. The satellite-tracking devices installed on board Community fishing vessels ensure the automatic transmission to the FMC of the flag Member State, at all times, of data relating to the fishing vessel identification, the most recent geographical position of the fishing vessel, the date and time of the said position and, with effect from 1 January 2006, the speed and course of the fishing vessel.

Each Member State is to ensure that its FMC receives this information, at least once an hour, through the VMS.[284]

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[283] Official J. L.240, 10.07.2004, p. 17

The VMS established by each Member State must ensure the automatic transmission of all these data to the FMC of a coastal Member State during the time the vessels are in the waters of that coastal Member State.

In the event of a technical failure or non-functioning of the satellite-tracking device fitted on board a Community fishing vessel, the master or the owner of the vessel must communicate every four hours the up-to-date current geographical position of the vessel to the FMC of the flag Member State and the FMC of the coastal Member State.

4.6.12 Maritime Security

Although European Maritime Safety Agency was not given tasks and responsibilities in respect of maritime security until 2004 following the coming into force of Regulation (EC) No 724/2004[285], the concept of security in the maritime sector is not new. Following the seizure of the *Achille Lauro* cruise ship[286] in 1985, there was much speculation that an increased number of security incidents would follow.

Figure 4.21 Italian cruise ship Achille Lauro, 1985

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[284] J. Mcconville, "International Maritime Transport : Perspectives (Routledge Advances in Maritime Studies), 2004, p. 212

[285] Official J. L.129, 24.04.2004, p. 1-5

[286] On October 7, 1985 four heavily armed terrorists representing the Palestine Liberation Front (PLF) hijacked the Italian cruise ship Achille Lauro, with some 100 mostly elderly passengers on board, in Egyptian waters.

In recent years, the maritime industry has been broadly evaluating security at its facilities and voluntarily taking actions to improve security as deemed appropriate based on shipping trade area, geographic location, potential risk to workers and the surrounding communities, and potential risk attacks.

Terrorism ties and political agendas are the latest trend in motivation for stealing cargo and ships, suggesting that "modern pirates" are increasing the violence and the severity of the attacks.

However, it took the tragic events of September 11th 2001 for the maritime community to agree the need for international maritime security requirements. Following intensive discussions, the International Maritime Organisation (IMO) in December 2002 adopted new international maritime security requirements in the SOLAS Convention 1974, new Chapter XI-2, and a new International Ship and Port Facility Security (ISPS) Code. They were required to be implemented by 1 July 2004.

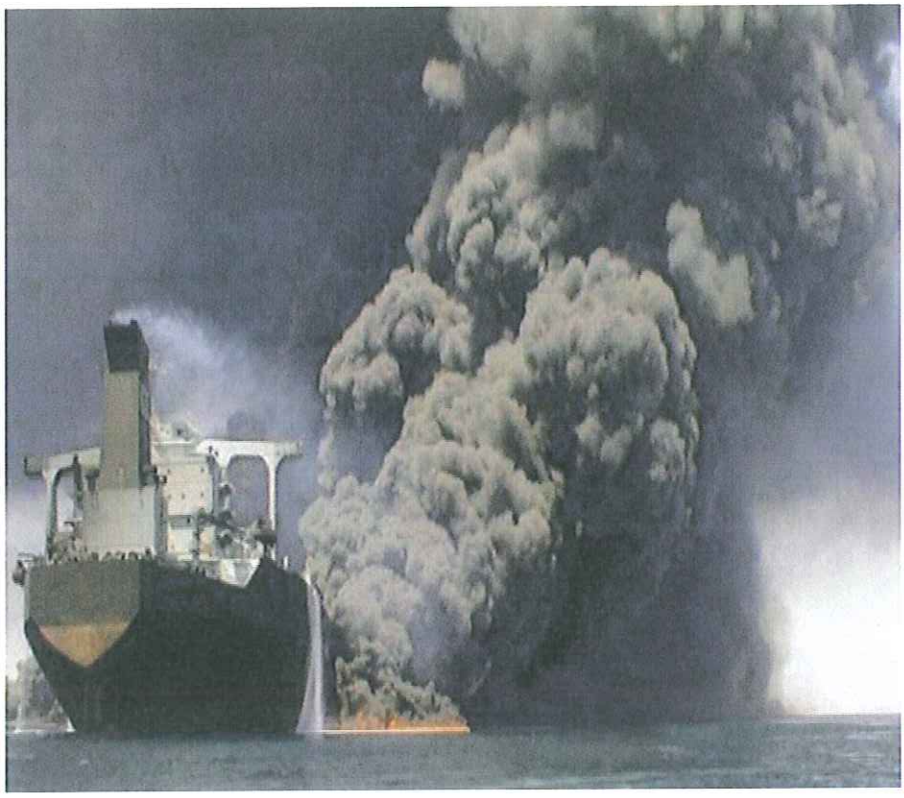

Figure 4.22 The MV Limburg was attacked by terrorists in the Gulf of Aden in 2002, an example of the threat posed by maritime terrorism.

Until then, the majority of terrorist surveillance, and response measures, put in place throughout the EU have been as a result of individual action at Member State level. These

include measures to protect against terrorism in the maritime sector which vary significantly across the EU. Following adoption of the new IMO security regime, the EU Member States agreed the need for measures at Community level and to achieve this, Regulation (EC) No 725/2004[287] of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security was adopted. The purpose of the new Regulation is to introduce and implement in a harmonised manner measures aimed at enhancing the security of ships engaged on international voyages and domestic shipping, including associated port facilities.

Acting pursuant to that regulation 10 June 2005the Commission adopted Commission Regulation(EC) No 884/2005[288] laying down procedures for conducting Commission inspection in the field of maritime security, in order to monitor the application of Regulation (EC) No 725/2004 at the level of each Member State and of individual port facilities and relevant Companies. On the basis of this legislation, inspections are coordinated and prepared by the Commission.

EMSA's mandate is set out in Regulation (EC) No 1406/2002[289], as amended, and is to provide technical assistance to the Commission, including in the performance of the Commission's inspection tasks, in respect of ships, relevant companies and Recognised Security Organisations (RSOs) authorised to undertake certain security-related activities. These inspections started in 2005 with the Member States' National Administrations, for which the Commission requested EMSA's participation in relation to the ships' part. EMSA participated in the first inspections of ships in 2006 and in 2007 the first inspections of shipping companies and RSOs have taken place.

EMSA also participates in the MARSEC Committee (comprising the Commission and representatives of Member States) – set up under Regulation (EC) No 725/2004 - in order to follow closely the developments associated with the implementation of the security requirements by the Member States. Although not an area where EMSA currently has a role, further security requirements have recently been implemented in the EU based on Directive 2005/65/EC[290] on enhancing port security. This Directive requires that Member States extend security measures from the ship-port interface (the port facility) to the whole

[287] Official J. L.129, 29.04.2004, p. 6-91
[288] Official J. L.148, 11.06.2005, p. 25-29
[289] Official J.L.208, 05.08.2002, p. 1-9
[290] Official J. L.310, 25.11.2005, p. 28-39

port area. Implementation by Member States was required by 15 June 2007. These measures will further enhance maritime security across the EU.

4.6.13 Evaluation of Maritime Safety

Maritime safety is an issue that is of major concern to the port sector. Efficient action in this field cannot be taken on national level only, but requires international coordination. As all bona fide players in the chain, port authorities take up their responsibilities in this respect.

The development of an EU monitoring, control and information system for maritime traffic, as currently proposed by the European Commission, would improve the safety of navigation and the prevention of pollution in EU waters. It would be useful and more practical for port authorities to exchange traffic-related information with different parties such as port state control authorities and other ports that are on the route of the ship, in order to make better use of the information, monitor the traffic and reduce the risks posed by ships carrying polluting and/or dangerous goods. As proposed by the EU and IMO, guidelines for ships in distress would have to be developed.

Such ships may find shelter in a port, provided that adequate measures, including appropriate compensation, are taken to safeguard the port, its wider community, environment and economy. However, a port is not necessarily the best place of refuge. In many instances, sheltered waters provide much better guarantees to limit overall risks.

4.7 MARITIME TRANSPORT EMPLOYMENT AND WORKING CONDITIONS

4.7.1 Organisations of Seafarers' Working Time

Council Directive 1999/63/EC[291] of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST).

This Directive aims to protect the health and safety of seafarers by laying down minimum requirements with regard to working time.

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[291] Official J. L.244, 16.09.1999, p. 264

The basic directive concerning certain aspects of the organisation of working time provides for the replacement of its general provisions with more specific requirements. This is the case for the maritime sector.

The current directive is intended to put into effect the European Agreement concluded on 30 September 1998 between the trade-union and employers' organisations of the maritime transport sector (ECSA and FST) concerning the working time of seafarers.

Those organisations are strongly representative at European level. The ECSA, the main employers' organisation, represents the national associations of shipowners from all the Member States, while the FST represents a large majority of European seafarers[292].

The agreement in question, comprised in an annex to the directive, applies to seafarers on board every seagoing ship, whether publicly or privately owned, which is registered in the territory of a Member State and is ordinarily engaged in commercial maritime operations.

A ship that is on the register of two Member States is deemed to be registered in the State whose flag it flies.

Hours of work and rest are laid down as follows:

- either the maximum hours of work which must not exceed:

- 14 hours in any 24-hour period;

- 72 hours in any seven-day period;

- or the minimum hours of rest which must not be less than:

- 10 hours in any 24-hour period;

- 77 hours in any seven-day period.

Hours of rest may not be divided into more than two periods, one of which must be at least six hours in length, and the interval between consecutive periods of rest must not exceed 14 hours. Musters, fire-fighting and lifeboat drills, and drills prescribed by national laws and international instruments must be conducted in a manner that minimises the disturbance of rest periods. Provision is to be made for a compensatory rest period if a seafarer's normal period of rest is disturbed by call-outs.

Seafarers are entitled to paid annual leave of at least four weeks, or a proportion thereof for periods of employment of less than one year. The minimum period of paid leave may not be replaced by an allowance in lieu.

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[292] Stevens H, "Transport Policy in the European Union (The European Union)",Palgrave Macmillan, 2004, p. 211

Seafarers under the age of 18 are not permitted to work at night. In addition, no person under 16 years of age is allowed to work on a ship.

The master of a ship has the right to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. The master may also suspend the schedule of hours of work or hours of rest until the normal situation has been restored.

The on-board working arrangements are to be posted up in an easily accessible place, in a standardised format in the working language or languages of the ship and in English. The information to be given includes:

- the schedule of service at sea and in port;
- the maximum hours of work or the minimum hours of rest required by the laws, regulations or collective agreements in force.

The master must do everything necessary to ensure that the rules governing hours of rest and hours of work are complied with.

The shipowner must ensure that the master is given the necessary resources and adequate manpower.

All seafarers must:

- possess a certificate attesting to their fitness for the work for which they are employed;
- have regular health assessments.

Member States may maintain or introduce more favourable provisions than those laid down in the directive.

Member States must take the necessary steps to comply with the provisions of the directive by 30 June 2002 at the latest, or ensure that, by this date at the latest, the social partners have implemented the necessary provisions by means of agreement.

4.7.2 Organisation of Hours of Work on Board Ships Using Community Ports

Directive 1999/95/EC[293] of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports.

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[293] Official J. L.14, 20.01.2000, p. 29-35

This Directive aims to improve safety at sea, combat unfair competition from third-country shipowners and protect the health and safety of seafarers on board ships using Community ports.

The basic directive on various aspects of the organisation of working time provides for the replacement of the Directive's general provisions with more specific requirements. This is case for the maritime sector due to the particularly long hours of work at sea.

The current directive is designed to permit application of the provisions governing hours of work on ships which are not flying the flag of a Member State or are not registered in the territory of a Member State.

The provisions of the directive will not apply to these ships until ILO Convention No 180 and the Protocol to ILO Convention No 147 enter into force.

Enforcement of the provisions contained in ILO Convention No 180 is monitored on the basis of:

- a table with the shipboard working arrangements ;
- seafarers' records of hours of work and hours of rest;
- the physical state of the seafarers (excessive fatigue as a result of excessive working hours).

The directive includes an annex with a model table with the shipboard working arrangements and a model record of hours of work and hours of rest.

A Member State that has received a complaint or obtained evidence that a ship does not conform to the existing international standards must:

- forward a report to the government of the country in whose registry the ship is registered;
- take all necessary measures to ensure that any conditions on board ship which are hazardous for the safety or health of seafarers are rectified.

The measures may include a ban on leaving the port until such time as the irregularities have been rectified.

In the event of failure to comply with the rules governing working hours, the competent authority of the Member State must inform the master, the owner or operator, the administration of the flag State or the State where the ship is registered or the consul, and specify the corrective actions required.

The Member State must ensure that the ship does not leave the port until the deficiencies have been rectified.

When carrying out inspections, Member States may not unduly delay ships.

The owner or the operator of the ship or his representative in the Member State may appeal against any detention decision. An appeal does not cause the detention to be suspended.

Member States and the competent authorities must cooperate with a view to ensuring the effective application of the directive.

The bulk of the existing measures in the field of maritime transport is derived from international standards adopted by the International Maritime Organisation and the International Labour Organisation.

In 1995 the International Maritime Organisation adopted a revised Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention), which notably provides for[294]:

- minimum daily rest periods of ten hours every 24 hours, which cannot be split into more than two periods, and including one consecutive six-hour period at least ;
- weekly rest time of at least 70 hours.

Likewise, in 1996 the International Labour Organisation (ILO) adopted Convention 180 concerning seafarers' hours of work and the manning of ships and the Protocol to the Merchant Shipping (Minimum Standards) Convention of 1976.

4.7.3 Seafarer Training and Recruitment

Communication from the Commission to the Council and the European Parliament of 6 April 2001 on seafarer training and recruitment.

The aims to advocate a certain number of urgent activities which, when duly carried out by the Member States and both sides of industry, could redress the current situation whereby there is a lack of Community seafarers.

The total number of EU nationals employed on board ships flying the Community flag is currently 120000, down by 40% as compared with 1985, whereas the number of nationals of non-member countries employed on board EU ships has risen from 29 000 in 1983 to

[294] Stevens H, "Transport Policy in the European Union (The European Union)",Palgrave Macmillan, 2004, p. 71

34500 today. It is felt that the scarcity of officers within the EU could reach 13 000 posts in 2001 and 36000 in 2006, a situation made yet worse by the problem of officer ageing.

Several sociological and financial factors explain the lack of attraction of this profession for young Europeans. Between 1992 and 1999 the monthly average salary for qualified seafarers fell by 53% for the Germans, 51% for the Belgians, 49% for the Dutch and 26% for the Portuguese and 14% for the French. Separation from their families and friends is less and less accepted by potential young recruits and the scope for visiting exotic places has disappeared since ships only make short calls or indeed remain outside the port for their commercial operations. Thus the drop-out rate during training at sea lies between 22 and 32% and reaches 60 or 70% in certain Member States[295].

To this is added the fact that; when faced with growing competition from non-member countries several EU shipowners have decided to cut their costs by registering their ships under non-Community flags or under second registers whereas at the same time they replace their Community seafarers by cheaper third-country labour.

This growing shortage of seafarers could have a dramatic impact. First of all in terms of safety, since 80% of accidents are due to human error, and that third-country staff are in general terms less well trained than Community staff. Then, for a whole series of activities linked with transport (ports, maritime-shipping companies, inspection bodies, insurance companies) which could face recruitment difficulties in that experience in sea-faring matters is an advantage or a prerequisite for job applicants[296].

It is not a matter of the Commission's envisaging new legal acts, but rather of ensuring that existing laws or laws in the process of adoption are applied correctly. Sole exception: a legal act concerning ships abandoned in the Community ports. It would be a matter of permitting ports to sell on such ships and to apply the law concerning company transfers and collective dismissals.

The Commission hopes that all of the operators in this sector will combine their efforts and take the following urgent action:

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[295] P. A. Athanasios, " The Common EU Maritime Transport Policy: Policy Europeanisation in the 1990s (Transport and Mobility) ", Ashgate Publishing, 2002, p. 143-144

[296] P. A. Athanasios, " The Common EU Maritime Transport Policy: Policy Europeanisation in the 1990s (Transport and Mobility) ", Ashgate Publishing, 2002, p. 177

4.7.3.1 Passenger and Trans-Shipment Services

In view of the recent trend towards employing non-Community seafarers in this area (first of all restaurant staff, then officers) the Commission is calling for the adoption of the European legislation under examination, which is intended to ensure equal conditions of employment for Community and non-Community seafarers, and feels that an agreement could be reached by both sides of the industry. That agreement could also include other aspects such as improved training, living and working conditions, mapping out career plans and salary levels.

4.7.3.2 Public Awareness Campaign and Job Promotion

The Commission recommends that coordinated public awareness campaigns be held at both national and European levels in order to improve the brand image of this area among the young. They would have to stress the wide range of job options open to seafarers within widely diverse activities. In parallel to this both sides of industry will have to place more stress on enabling women to work in the seafaring professions.

4.7.3.3 Living and Working Conditions

In order to make on-board living and working conditions more attractive the Commission recommends the use of modern information technologies (e-mail for example) which could enable seafarers to keep in touch with their families[297]. It would thus be necessary to contemplate providing computer rooms on board ships and providing seafarers' families with computers. Providing reading, music and video rooms is also a possibility. However, the most important step is to organise appropriate periods of rotation between activities at sea and on land. Finally, the Commission would invite shipowners to study the scope for boosting on-board officers' pay rates in order to attract young persons to the profession.

4.7.3.4 Education and Training

Without calling into question the general competence of the Member States as regards training the Commission would like to draw attention to measures that are likely to improve the system of seafarers' education and training as a whole. It thus proposes, in particular that:

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[297] European Sea Port Organisation, ESPO position on the Commissions' II package, Brussels, 15 March 2001

- training programmes be adapted,
- national systems be better aligned,
- resources be concentrated on a restricted number of training institutes,
- on-board training be improved,
- retraining and course upgrading be promoted,
- the requirements applying to the acquisition of various certificates be loosened,
- certificates of fitness be mutually recognised,
- officer's posts within the merchant navy be made accessible.

The Commission still feels that setting up a specific Community fund for seafarers' training is not a realistic option and prefers to recommend that the Member States use the scope offered by the existing Community instruments (Socrates and Leonardo programmes).[298]

4.7.3.5 Support for the Research Programme

The Commission mentions a number of research areas which could be tackled in the future sixth framework programme:

- drawing up a profile of suitable applicants in order to improve the selection of students at naval colleges and to reduce the drop-out rate
- the factors prompting the choice to work at sea or on land
- types of job and career development
- improving on-board living and working conditions and more particularly the scope for communication between crew members and their families

the scope for bring national education and training systems closer together, and possible concentration on a smaller number of institutes.

4.7.4 Minimum Level of Training and Seafarers

Directive 2001/25EC[299] of the European Parliament and of the Council of 4 April 2001 on the minimum level of training of seafarers.

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[298] Commission of the European Communities, Communication from the Commission to the European Parliament and Council on a second set of Community measures on maritime safety.
[299] Official J. L.136, 18.05.2001, p. 17-41

The training of seafarers plays a major role in maritime safety and in the protection of the maritime environment. It is therefore essential to define a minimum level of training for seafarers in the Community having regard to training standards agreed at international level.

Directive 2001/25/EC determines minimum standards of training, certification and watchkeeping for seafarers serving on board Community vessels. It is aimed at ensuring that the International Maritime Organisation Convention on Standards of Training, Certification and Watchkeeping 1978 (STCW Convention), as revised, is implemented simultaneously and consistently in all Member States.

This Directive applies to seafarers serving on board seagoing ships flying the flag of a Member State, with the exception of:

- Warships or other ships owned by a Member State and engaged only in governmental, non-commercial service;
- Fishing vessels;
- Pleasure yachts not engaged in trade;
- Wooden ships of primitive build.

4.7.4.1 Training

The Directive sets out the rules on training and the standards of competence to be met by seafarers who are candidates for the issue or revalidation of certificates that allow them to perform the functions for which the relevant certificate of proficiency is issued. These rules are consistent with the provisions of the Convention. The Directive lays down, for the various ranks of seafarer, the mandatory minimum requirements for the issue of certificates corresponding to the different categories.

The categories of seafarer to which these rules relate are: masters, chief mates, deck officers and engineer officers, chief engineer officers and second engineer officers, certain categories of ratings (i.e. those working in an engine-room, forming part of a watch or serving on certain types of ship), and personnel responsible for radiocommunications.

For certain categories of vessel, such as tankers and ro-ro passenger ships, the Directive lays down special training requirements. It sets out the mandatory minimum requirements concerning the training and standards of competence of seafarers serving on board these specific categories of vessel. It also lays down rules on education and training in

management of emergency situations, fire-fighting and the provision of medical aid, and for crew members responsible for catering services[300].

Member States are to establish processes and procedures for the impartial investigation of any incompetence, act or omission that may pose a direct threat to the safety of human life. Penalties or disciplinary measures are to be provided for and applied where:

- A company or master has engaged a person not holding a certificate as required by this Directive;
- A master has allowed a function for which a certificate is required to be performed by a person who does not hold the required certificate;
- A person has obtained by fraud an engagement to perform a function for which a certificate is required.

Member States are to ensure that:

- All training, assessment of competence and certification activities are continuously monitored;
- Independent evaluations of knowledge, understanding, skills and competence acquisition and assessment activities are carried out at intervals of not more than five years.

4.7.4.2 Certificate

A certificate is a valid document issued by, or under the authority of, the competent authority of a Member State, authorising its holder to serve as stated in the document or as authorised by national regulations.

Certificates are drawn up in the official language(s) of the issuing Member State.

4.7.4.3 Issue and Recognition of Certificates

With the new Directive 2003/103/EC[301], the Commission proposes the improvement of the current procedure for the recognition of mariners' certificates of competency issued outside the EU through a system of Community-wide recognition of certificates from labour-supplying third countries.

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[300] Power, Vincent., "Ec Shipping Law", Lloyd's Shipping Law Library, April 1999, p. 138

[301] Official J. L.326, 13.12.2003, p. 28-31. Directive 2003/103/EC is aimed at simplifying recognition of certificates by introducing a centralised and harmonised recognition procedure at Community level for third countries which comply with the Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention).

The principal objective is to improve, enhance and simplify the current procedure for recognition of certificates issued by third countries by introducing a recognition procedure at Community level for those certificates.

The Directive lays down rules on the issue of certificates including, in addition to the standards of competence for each category of seafarer, medical standards (see below).

Member States which recognise a certificate issued by the competent authority of another Member State must endorse it in order to attest its issue. Member States can choose between two models of endorsement (endorsement incorporated in the certificate or separate endorsement). Recognition of certificates issued by Member States and held by Community or non-Community nationals is to be granted in accordance with the provisions of the Community Directives on the recognition of diplomas (first and second general systems - Directives 89/48/EEC[302] and 92/51/EEC[303]).

Moreover, the Directive specifies the criteria for recognition by Member States of certificates issued by third countries. Member States must endorse such certificates in order to attest their recognition. The Directive provides for a separate procedure for such recognition, in line with the STCW Convention:

In the interests of safety at sea, a Member State may recognise and endorse a certificate issued outside the EU only if it is from a country which is a party to the STCW Convention which has been identified by the IMO Maritime Safety Committee as having been shown to have given full effect to the standards set out in the STCW Convention. Under the STCW, the IMO Maritime Safety Committee must identify the countries which have implemented all the provisions of the Convention (known as the "White List").

4.7.4.4 Medical Standards

Member States are to establish standards of medical fitness for seafarers, in particular with regard to eyesight and hearing. Each candidate for certification must provide satisfactory proof of his identity and that he is at least 18 years of age, is medically fit, and has completed training in seagoing service, etc.

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[302] Official J. L.19, 24.01.1989, p. 16-23

[303] Official J. L.30, 09.02.1995, p. 40

4.7.4.5 Rest Periods for Watchkeeping Personnel

In order to prevent fatigue amongst watchkeeping personnel, which is very often the cause of accidents at sea, the Directive includes provisions concerning minimum rest periods for watchkeeping personnel.

All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch must be allowed at least 10 hours of rest in any 24-hour period.

The hours of rest may be divided into no more than two periods, one of which shall be at least six hours long.

Dispensations

In circumstances of exceptional necessity, competent authorities may issue a dispensation permitting a given seafarer to serve on a given vessel for a specified period not exceeding six months in a capacity for which he does not hold the appropriate certificate.

Member State responsibilities

Member States are to designate the authorities or bodies that are to:

- Give training;
- Organise and/or supervise the required examinations;
- Issue certificates of competence;
- Grant possible dispensations.

4.7.4.6 Communication

In order to enhance maritime safety and prevent loss of human life and maritime pollution, communication among crew members on board ships sailing in Community waters should be improved.

A common working language must be established on board all passenger ships flying the flag of a Member State and on board all passenger ships starting and/or finishing a voyage in a Member State port.

In the case of oil tankers, chemical tankers and liquefied gas tankers, the Directive requires that the master, officers and ratings be able to communicate with each other in one or more common working language.

4.7.4.7 Port State Control

The Directive allows Member States to subject seafarers serving on any ship using their ports, irrespective of the flag it flies, to controls in order to verify that all seafarers who are required to be certificated by the STCW Convention are so certificated.

Member States must ensure that the relevant provisions and procedures laid down in Directive 95/21/EC[304] on port State control are applied. In some cases, it is necessary to assess the ability of seafarers to maintain watchkeeping standards as required by the Convention (verification of certificates). This is necessary in particular where a ship using a Community port is flying the flag of a country which has not ratified the STCW Convention, or has a master, officer or rating holding a certificate issued by a third country which has not ratified it. In other cases, crew members may be asked to provide an on-the-spot demonstration of their competence.

Lastly, the Directive specifies the grounds on which a vessel may be detained.

4.8 STATE AID TO MARITIME TRANSPORT

4.8.1 State Aid in the Transport Sector

One of the exceptions to the general prohibition on state aid as laid down in Article 87 EC apply to the rail, orad and inland waterway transport sector. Aid in this sector is, pursuant to Article 73 EC, considered to be compatible with the Community's state aid regime if it is granted for coordination of transport purposes or if it is concern public service obligations.

Aid to maritime and air transport, though not falling within the scope of Article 73EC, is also allowed if it fulfils the conditions laid down in the respective guidelines.

The purpose of this chapter is to give an overview of the legislation and Commission's policy in cases concerning transport measures. It begins with a short introduction of the concept of state aid as interpreted in tarnsport cases and then turns to a description of Article 73 EC and the regulations based thereupon. Its second and its third part cover the guidelines for maritime transport and tarnsport by air.

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[304] Official J. L.157, 07.07.1995, p. 1-19

4.8.2 Concept of State Aid

Article 87 (1) EC declares state adi to be incompatible with the common market. This means that in principle state aid is prohibited unless it can benefit from some of the excemptions in the Treaty.

The concept of State Aid is 'bjective' ; the aim or intention of the gramting authority does not matter for determining the nature of a measure. The Commission will only examine whether there is ;

- Transfer of state recources,
- Economic advantage : the aid reduces the coast normally borne in the budgets of the beneficiary undertakings,
- Selectivity : the aid favours certain undertakings or the production of certain goods,
- Distortion of competition, and
- Affect on trade between the member states

A 'transfer of a state recources' entails the use of funds belonging to, or being controlled by and imputed to public authorities. The form in which this transfer takes place does not matter. In Italy v Commision, Italy argued that a tax credit scheme applicable to Italian road haulers could not, by its nature, be classified as a state aid. The Court rejected this stating that "the concept of aid embraces not only positive benefits(...) but also measures which, in various forms, mitigate the cahrges which are normally included in the budget of an undertaking(...) ".[305]

Whether an economic advantage has been conferred upon the beneficiary by a member state depends on whether the state did not act in the same way as a private investor would have acted. This test can, i.a., be satisfied by proving that the state's measure coincides with "a significant capitalcontributionon the part of a private investor made in comparable circumstances".

In 1996 Italy granted restructuring aid to Alitalia in the form of capital injection. After receipt of the Commissions's decision, Alitalia filed a case with the EJC in which it pointed out that the employees of the Italian State finance company responsible fort here capitilisation of Alitalia had agreed in the capital increase. According to the Court, this did not satisfy the private investor test because the motivation of the employees differd would

[305] Case C-6/97, Italy v Commission, (1999) ECR, I-2981, Para.15.

act on the basis of profitability, he former were, according to the court, driven by the fear of loosing their jobs[306].

The advantage that is conferred must be selective, i.e. it must apply to certain undertakings. Therefore, a measure which is of general nature does not constitute state aid. However, if the application of a mesure which is not aimed at a specific addressee is subject to such criteria that it can only be granted to certain undertakings the mesure will be classified as selective[307].

It must also be established that the aid is able to distort competition and that it can affect the trade between member states. In this context it does not matter whether the amount of aid is very small. According to the EJC a small amount of aid "is liable to affect competition and trade between Member State where there is strong competition in the sector in which undertakings receiving that aid operate.[308]

Moreover, trade between member states may be affected even if the beneficiary is an undertaking which does not provide transport service in another state than the state of origin. The Court argues that a public subsidy may maintain or increase the supply of transport services by the beneficiary and it may, therefore, decrease the chances of undertakings which are established in other member state to provide transport services in the beneficiary's domestic market.[309]

4.8.3 Maritime Transport

In 2004, the Commission adopted the Community Guidelines on state aid to maritime transport[310] which revise the 1997 Guidelines and aim to increase transparency and support the maritime interests of the Community.

4.8.3.1 Scope

Any aid granted by a member state or through state resources in favour of maritime transport is covered by the Guidelines. This includes transport of goods and passengers by sea.

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[306] Case T-296/97, Alitalia, (2000) ECR, II-3871, Paras 80-84

[307] Case T-55/99, CETM, (2000) ECR, II-3207, Para. 40. See also, Case C-351/98, Spain v. Commission, (2002) ECR, I-8031, Paras. 39-45

[308] Case C-531, Spain v. Commission, (2002) ECR, I-8031, Para. 63. See also, Case T-214/95, Naams Gevest, (1998) ECR, II-717

[309] Case C-280/00, Atmark, (2003) ECR, I-7747.

[310] Commision Communication on C(2004) 43, Official J. L.13, 17.01.2004, p. 3.

- "Between any port of a member stateand any port or off-shore installation of another member state", or
- "between the ports of a member state and ports or off-shore installation of a third country".[311]

In a Commision Decision of 30 June 2004 concerning a series of tax mesures which Belgium planned to implement for maritime transport[312] the Commision stresses that the eligibility of an activity under the Guidelines, depends on whetherthe activity is "intrinsically linked with maritime transport".

Through the analysis of measure under a flat-rate taxation scheme the Commission reached the conclusion that the sale of luxury articles and gambling, gaming tables and casinos on board "could not be intrinsically linked with maritime passenger transport" while such a link could be established fort he sale of advertising space on board passenger ships since it concidered this activity to be a "normal activity of a company engaged in maritime passenger transport."[313]

4.8.3.2 Flag Link

Aid should only be granted to ships flying the flag of a member state. Exceptions are permitted if the aid is granted in respect of ships entered in registers under point(3) of the Annex to the Guidelines, and if at least the following conditions are fulfilled :

- the ships must comply with the international standarts and Community law, including those relating to security, safety, environmental performance and on-board working conditions,
- the ships are operated from the Community,
- the ship-owner is establisehed in the Community and the member state concerned demonstrates that the register contributes directly to the objectives of the Guidelines.

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[311] Article 1 (4) (a) and (b) of Council Regulation No 4055/86. See also Article 2 (1) of Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (Maritime Cabotage), Official J. L364, 12.12.1992, p. 7.

[312] Commission Decision 2005/417/EC of 30 June 2004, Official J. L.150, 10.05.2005, p. 1.

[313] Commission Decision 2005/417/EC of 30 June 2004, Official J. L.150, 10.05.2005, p. 1. , Paras.133 and 138

4.8.3.3 Permissible Aid

Aid measure which may be granted under the Guidelines are fiscal measures, labour related cost, crew relief, investment aid, regional aid, training aid, restructuring aid, public service obligations and cotracts, and aid to short sea shipping.

4.8.3.3.1 Fiscal Measures

The Commision recognises the need for an improvement of the member state's fiscal climate in the light of many ship-owners flagging out their vessel and considering corporate relocation to third countries with a fiscal climate which is more attractive tahn the one in teh member state. It, therefore, allows for tax relief measures as well as tonnage tax[314] - both of which are classified as state aid – which aim at supporting the objectives of the Guidelines and which are supportive of the Community's maritime transport interests. The total amount of aid granted should not be higher then the total amount of taxes collected from shipping activities, and special aaccounts should be hold in all cases where the beneficiary also carries out activities which do not qualify for aid.

4.8.3.3.1.1 Ship-Management Companies

While the above-mentioned fiscal measures can generally be garnted to ship-owning companies, their application to ship-management companies is restricted ; aid may only be granted for those vessels for which the ship-management company has been assigned the entire crew and the technical management, responsibility fort he vessel's operation has to be assumed in full by the ship-managers who also have to take over from the owner all the duties and responsibilities imposed by the International Safety Mnagement (ISM) Code.[315]

4.8.3.3.1.2 Towage and Dredging

Towage only falls within the scope of the Guidelines if the maritime transport activities make up for more than 50% of the activities effectively carried out by a tug during a given year.

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[314] The ship-owner pays an amount of tax, which is payable irrespective of the company's actual profits or losses, and which is linked directly to the tonnage tax operated. Member states currently appliying a tonnage tax system are, for example, the UK, the Netherlands, Denmark, and Ireland. See, i.s. , Commision Decision of 2 August 2002, N 504/2002, Ireland – Introduction of a tonnage tax.

[315] Adopted by the IMO in 2002 (http://www.imo.org/Humanelement/mainfarme.asp?topic_id=287)

However, towage activities carried out in, i.a. , ports or consisting in assisting a self-propelled vessel to reach a port are not considered to be "maritime transport activities" and derogation from the flag link is not possible in relation to towage activities.

Dredging activities are, in principle, excluded from the scope of the Guidelines. An exception may be mad in cases where the company is registerd in a member state and where more than 50% of their operational time consists in "the transport at deep sea of extracted meterials".

4.8.3.3.2 Labour Related Costs

In addition to the eemtions provided for in Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 EC to state aid for employment in the maritime transport sector is also permitted if it concerns reduced rates of income tax or of cotributions fort he social protection of Community seafarers employed on board ships registered in a member state in as far as they "directly stimulate the devolepment of the sector and employment rather than provide general assistance."

Seafarers are :

"- Community/EEA citizens, in the case of seafarers working on board of vessels(...) providing scheduled passenger services between ports of the Community,

- all seafarers liable to taxation and/or social security contributions in a Member State, in all other cases ".

In case a "clear link" to conributions for social protection or income tax can be established, a member state may also choose to reimburse ship-owners for the costs arising from the levies in stead of reducing the rates. Besides the existence of a "clear link" the Guidelines also require the system to be "transparent and not open to abuse" as well as without an element of overcompensation.

4.8.3.3.3 Training Aid

While aid garnted with a view of ameliorating and updating Communityofficers's skills[316] and aid fort he proffesional retraining of high-seas fisherman who would like to work as

[316] This aid may be granted during their whole career.

seafarers may be allowed, financial contributions for on-board training can only be paid in cases where the traniee is not a member of the crew[317].

A member state can also Grant aid for research and developments which focus on quality, productivity, safety and enviromental protection.

Finally, aid to training is covered by Commission Regulation No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 EC to tarining aid.[318]

4.8.3.3.4 Public Service Obligations and Contracts

Article 4 of Council Regulations No 3577/92[319] provides that public service contracts may be concluded or public service obligations may be imposed "as a condition fort he provision of cabotage services, on shipping companies participating in regular services to, from an between islands", and it states that "where applicable, any compensation for public service obligations must be available to all Community shipowners".

The Guidelines require the duration of public service contracts to be limited to a "reasonable and not overlong" period.[320]

4.8.3.3.5 Short Sea Shipping

Short-sea shipping means the transport between ports in the territory of the member states. Aid fort his activity is allowed if it aims at decreasing the launching costs of short-sea shipping services in order to promote these services.

The aid will only be authorised if the beneficiaries are ship-owners, and if it fulfils all the conditions laid down in the Guidelines. Deragation from the flag link is not possible.

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[317] See for example Commision Decision of 16 November 2004, N 376/2004, Germany - "Ausbildungsbeihilfen für deutsche Seeschifffahrtsunternehmen – bundesdeutsche Reichtlinine zur Forderung der detsche Seeschifffahrt vom 23 April 2004".

[318] Official J. L.10, 13.01.2001, p. 20.

[319] Council Regulations (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within member states (maritime cabotage), Official J. L.364, 12.12.1992, p. 7.

[320] This should normally not be more than 6 years.

4.9 MARITIME TRANSPORT AND ENVIRONMENT

The European Union wants to take stock of the environmental and health problems caused by atmospheric emissions from seagoing ships and to define objectives, actions and recommendations to help reduce such emissions over the next ten years.

Communication from the Commission to the European Parliament and the Council, of 20 November 2002, "A European Union strategy to reduce atmospheric emissions from seagoing ships".[321]

4.9.1 Impact on Environment and Health

Emissions from seagoing ships include air pollutants, greenhouse gases and ozone-depleting substances entailing risks for human health and the environment. Sulphur dioxide (SO2) and nitrogen oxide (NOx) emissions from ships are responsible for acid deposition, which can be harmful to the environment, as well as particulate matter harmful to health. NOx and volatile organic compound (VOC) emissions contribute to the formation of ground-level ozone harmful to health and to the environment. NOx emissions contribute to environmentally damaging eutrophication. Carbon dioxide (CO2) emissions contribute to climate change. Halon emissions damage the ozone layer.

The communication contains a table showing emissions of air pollutants and greenhouse gases from ships in Community waters in 2000 as well as projected emissions for 2010 and their environmental impact. Other figures show ships' SO2 emissions in EU sea areas, the contributions of ships' SO2 and NOx emissions to critical loads of acidity being exceeded, the role of NOx and COV emissions in the concentration of ground-level ozone in Europe and the role of ships' emissions of NOx in exceeding the critical loads of nutrient nitrogen.

In table 4.1, you can see the Hydrocarbon pollution incidents in Europe.[322]

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[321] Proposal for a Directive of the European Parliament and of the Council amending Directive 1999/32/EC as regards the sulphur content of marine fuels/* COM/2002/0595 final volume II- COD/2002/0259/* Official J C 4SE, 25.02.2003, p. 277-296.

[322] International Tanker Owners Pollution Federation, Ltd.

Table 4. 3 Major Hydrocarbon Pollution Incidents (Euro only)

Vessel Name	Year	Location	Oil Lost (tons)
Torrey Canyon	1967	Scilly Isles, UK	119000
Jakob Maersk	1975	Porto, Portugal	88000
Urquiola	1976	Galicia, Spain	100000
Amoco Cadiz	1978	Brittany, France	223000
Independenta	1979	Bosporus, Turkey	95000
Irenes Serenade	1980	Navarino Bay, Greece	100000
Haven	1991	Genoa, Italy	114000
Aegean Sea	1992	Galicia, Spain	74000
Braer	1993	Shetland Islands, UK	85000
Sea Empress	1996	Milford Haven, UK	72000
Erika	1999	Brittany, France	20000

4.9.2 Preventive Measures Deloyed

At the international level, Annex VI of the MARPOL Convention (adopted by the International Maritime Organisation in 1997, but not yet in force) sets regulations for the prevention of air pollution by ships. The Kyoto Protocol also calls for the reduction of greenhouse gas emissions from ships.

To date, the bulk of Community legislation on atmospheric emissions does not apply to ships. As a result, in the European Union, ship emissions are higher than other land-based transport emissions. For example, by 2010, SO2 emission from ships in European waters are likely to account for 75% of all emissions from EU land-based sources. There are, however, a number of Community measures requiring the Commission to take action on ship emissions:

- Directive 2001/81/EC[323] on national emission ceilings for certain atmospheric pollutants commits the Commission to report on the extent to which emissions from

[323] Official J. L.309, 27.11.2001, p. 22-30.

maritime traffic contribute to acidification, eutrophication and the formation of ground-level ozone;

- Directive 1999/32[324] relating to a reduction in the sulphur content of certain liquid fuels sets sulphur limits for marine distillate oil used in EU territorial waters;
- Directive 94/63/EC [325] on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations provides that the Commission must consider extending the scope of the Directive to include the loading and unloading of ships;
- Regulation (EC) No 2037/2000[326] on substances that deplete the ozone layer bans the marketing and use of ozone-depleting substances in the EU;
- The Clean Air for Europe (CAFE) Programme tackles all sources of atmospheric emissions;
- The sixth Environment Action Programme : one of the objectives of 6EAP is to achieve levels of air quality that do not have unacceptable effects on human health and the environment, and to stabilise greenhouse gases emissions in order to prevent unnatural variations of the earth's climate.

In recent years, economic instruments have been introduced in some countries and ports around the world to encourage ships to reduce their atmospheric emissions. These include differential taxes on marine fuels, differentiated port and fairway dues, and differentiated tonnage taxes.

4.9.3 Strategy Objectives and Actions

The objectives of the strategy are:

- to reduce ships' emissions of SO2 where they contribute to critical loads for acidification being exceeded, and where they affect local air quality;
- to reduce ships' emissions of NOx where they contribute to critical loads for acidification and eutrophication being exceeded, and build-ups of ground-level ozone which affect health and the environment;
- to reduce ships' emissions of primary particles where these affect local air quality;

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[324] Official J. L.121, 11.05.1999, p. 13-18.
[325] Official J L 365, 31.12.1994, p. 24-33.
[326] Official J. L.244, 29.09.2000, p. 1-24.

- to reduce ships' emissions of VOCs where these contribute to build-ups of ground-level ozone which affect health and the environment;
- to reduce ships' emissions of CO2;
- to eliminate emissions of ozone-depleting substances from all ships operating in EU waters.

The communication outlines a number of actions to achieve these objectives, including:

- coordinating the positions of EU Member States within the International Maritime Organisation (IMO) to press for tougher measures to reduce ship emissions. The entry into force of MARPOL Annex VI setting regulations for the prevention of air pollution from ships is a fundamental aspect of the strategy;
- adopting the proposal for a Directive amending Directive 1999/32/EC [327] to limit the sulphur content of marine fuels (see Related acts below);
- amending Directive 97/68/EC[328] on NOx and PM emissions standards from non-road engines ;
- if the IMO has not proposed tighter international standards by 2007, to bring forward a proposal to reduce NOx emissions from seagoing vessels;
- to remove, by 2010, the exemption which permits the use of halon on board existing cargo ships operating in EU waters;
- although measures are not needed at the moment, to re-examine the possibility of proposing legislation in future to reduce VOC emissions from ship-loading;
- to examine the use of a set of economic instruments providing incentives to reduce ships' atmospheric emissions beyond regulatory requirements;
- to launch a charging regime on the basis of ships' environmental performance to benefit the least damaging;
- to fund research into low-emission ship technologies;

to organise conferences on best practice in the field of ship emission reduction technologies.

There are two realated acts that Commission Recommendation 2006/339/EC[329] of 8 May 2006 on the promotion of shore-side electricity for use by ships at berth in Community

[327] Official J. L.121, 11.05.1999, p.13-18.
[328] Official J. L.59, 27.02.1998, p. 1-6.
[329] Official J. L.125, 12.05.2006

ports and Directive 2005/33/EC [330] of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels.

4.9.4 Prohibition of Organotin Compounds on Ships

This regulation aims to prohibit organotin compounds (anti-fouling paints) on all ships entering port in the Community in order to reduce or eliminate the adverse effects of these products on the marine environment and human health.

Regulation (EC) No 782/2003 [331]of the European Parliament and of the Council of 14 April 2003 on the prohibition of organotin compounds on ships.

Based on the strategic objectives set out in the Commission White Paper on transport policy, the purpose of this Community regulation is to reduce the adverse effects on the environment caused by organotin compounds used on ships.

Organotin compounds are chemicals from anti-fouling paints used on boat hulls and nets. These surface coatings are designed to prevent the attachment of algae, molluscs and other organisms which slow down vessel speeds.

Organotin compounds pose a definite risk to aquatic fauna and flora. During the '60s the chemical industry developed efficacious anti-fouling paints using metallic compounds, in particular the organotin compounds tributyltin (TBT) and triphenyltin (TPT).

These chemicals are highly toxic for sealife (larvae, mussels, oysters and fish). For this reason, they have been banned in many European countries, while several Community directives (Directive 76/769/EEC and the successive amendments thereto)[332] provide for regular monitoring of organotin compound levels.

The International Maritime Organisation (IMO) International Convention on the Control of Harmful Anti-Fouling Systems (AFS Convention) adopted at an IMO diplomatic conference in October 2001 bans application of TBT coatings on ships with effect from 1 January 2003 followed, as of 1 January 2008, by the elimination of active TBT coatings from ships.

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[330] Official J. L.191, 22.07.2005, p.59-69.

[331] Official J. L.115, 09.05.2003, p.1-11.

[332] Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the restrictions on the marketing and use of certain dangerous substances and preparations.
Official J. L.262, 27.09.1976, p.201-203.

The AFS Convention will enter into force 12 months after at least 25 States representing 25% of the world's merchant shipping tonnage have ratified it.

Considering that non-polluting substitutes are available today, the AFS Convention prohibits the use of all harmful organotin compounds in anti-fouling paints applied to ships. At the moment, only organotin compounds are banned, but the Convention will also establish a mechanism to prevent potential future uses of other harmful substances in anti-fouling systems, in line with the precautionary principle.

The regulation directly imposes on shipowners detailed requirements which must be observed throughout the Community.

The regulation applies to:

- ships flying the flag of a Member State,
- ships not flying the flag of a Member State but operating under the authority of a Member State, and
- ships entering port in a Member State but not covered by the two previous points.

The regulation does not apply to any warship, naval auxiliary or other ship owned by a State and used on government service.

As from 1 July 2003, organotin compounds which act as biocides in anti-fouling systems may no longer be applied on ships flying the flag of a Member State. As from 1 January 2008 ships entering port in a Member State must either bear no coating of organotin compounds which act as biocides or must bear a second topcoat forming a barrier to prevent organotin compounds leaching from the non-compliant anti-fouling undercoat.

The regulation introduces a survey and certification system for ships flying the flag of a Member State. It stipulates that:

- ships of 400 gross tonnage and above must be surveyed, irrespective of the voyage;
- ships of 24 metres or more in length, but less than 400 gross tonnage, must simply carry a declaration of compliance with the regulation or with the AFS Convention. No particular survey or certificate is specified in the regulation to avoid overburdening the administrations in the Member States;
- no survey or certification is envisaged for ships of less than 24 metres in length, i.e. mainly pleasure craft and fishing boats.

As regards recognition of certificates and of statements of compliance:

- as from 1 July 2003, Member States must recognise any AFS certificate issued by or on behalf of a Member State;
- as from 1 July 2004, Member States must recognise any AFS statement of compliance issued on behalf of a Member State;
- as from 1 July 2003, Member States must recognise any AFS declaration.

By 10 May 2004 at the latest, the Commission must report to the European Parliament and to the Council on progress with ratification of the AFS Convention and, if necessary, propose amendments to speed up the process of reducing pollution by harmful anti-fouling compounds.

4.9.5 Prevention of Pollution From Ships

The Community legislation on maritime safety must be adapted at regular intervals to take account of the amendments or the protocols to the international conventions, new resolutions or changes to the codes and compendia of existing technical rules.

Directive 2002/84/EC [333] of the European Parliament and of the Council of 5 November 2002 amending the Directives on maritime safety and the prevention of pollution from ships.

Figure 4.23 Potential risks of coming into contact with oil, hazardous chemicals and cargo

[333] Official J. L.324, 29.11.2002, p.53-58.

This Directive aims to improve the implementation of Community legislation on maritime safety, on the prevention of pollution from ships and on shipboard living and working conditions.

The Directive is closely linked to Regulation 2002/2099/EC [334] establishing a Committee on Safe Seas and the Prevention of Pollution from Ships and amending the Regulations on maritime safety and the prevention of pollution from ships.

The aim is to simplify the committee procedures through the replacement of the various committees set up under the Community legislation on maritime safety and the prevention of pollution from ships with a single committee to be known as the Committee on maritime safety and the prevention of pollution from ships.

At the same time, the Directive will seek to speed up and simplify the incorporation of international rules into Community legislation.

This Directive amends the following Directives:

- Directive 94/57/EC[335]
- Directive 95/21/EC[336]
- Directive 96/98/EC[337]
- Directive 97/70/EC[338]
- Directive 98/18/EC[339]
- Directive 98/41/EC[340]
- Directive 99/35/EC[341]
- Directive 2000/59/EC[342]
- Directive 2001/25/EC[343]
- Directive 2001/96/EC[344]

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[334] Official J. L.324, 29.11.2002, p.1-5.
[335] Official J. L.319, 12.12.1994, p. 20-27.
[336] Official J. L.291, 14.11.1996, p. 42.
[337] Official J. L.241, 29.08.1998, p.27.
[338] Official J. L.34, 09.02.1998, p. 1-29.
[339] Official J. L.113, 12.05.2000, p. 55.
[340] Official J. L.188, 02.07.1998, p.35-39.
[341] Official J. L.138, 01.06.1999, p. 1-19.
[342] Official J. L.332, 28.12.2000, p.81-90.
[343] Official J. L.136, 18.05.2001, p. 17-41.
[344] Official J. L.13, 16.01.2002, p. 9-20.

4.9.6 Ship Source Pollution and Criminal Penalties

The sinking of the Prestige in November 2002 and of the Erika in December 1999 highlighted the need to tighten the net in relation to ship-source pollution. However, accidents are not the main source of pollution: most of it is the result of deliberate discharges (tank-cleaning operations and waste oil disposal).

In this respect, the 390 oil slicks detected in the Baltic Sea and the 596 detected in the North Sea in 2001 show the need to put an end to the thousands of deliberate discharges of waste and cargo residues from ships in the seas around Europe.

These rules incorporate into Community law the 1973 International Convention on the Prevention of Pollution from Ships and its 1978 Protocol (Marpol Convention 73/78). This will make it possible to harmonise application of the provisions of this convention.

At international level, compensation for oil pollution is regulated by the International Convention on Civil Liability for Oil Pollution (CLC) and the International Convention setting up the Oil Pollution Compensation Fund (Fund Convention), to which all the coastal Member States are parties.

These two Conventions establish a two-tier liability system built upon:

- (limited) strict liability for the ship owner;
- a collectively financed fund which provides supplementary compensation to victims of oil pollution damage who have not obtained full compensation.

Related act : Directive 2000/59/EC [345]

The European Union creates a legal framework for imposing penalties, particularly criminal penalties, in the event of discharges of oil and other noxious substances from ships in Community waters.

Directive 2005/35/EC[346] of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements.

Council Framework Decision 2005/667/JHA[347] of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution.

The current legislation states that ship-source discharges in breach of Community law constitute a criminal offence and that penalties, both criminal and administrative, must be

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[345] Official J. L.322, 28.12.2000, p.81-90.
[346] Official J. L.105, 13.04.2006, p.65-66.
[347] Official J. L.255, 30.09.2005

imposed if the persons concerned are found to have caused or participated in the act with intent or as a result of negligent behaviour.

These rules comprise two different elements:

- the incorporation into Community law of international discharge rules for ship-source pollution;
- the application by the Member States of penalties when these rules are breached and the definition of the legal framework for these penalties.

4.9.6.1 Directive 2005/35/EC

According to this Directive, discharges of oil or other noxious substances from ships must be regarded as an infringement and punished accordingly when committed with intent, recklessly or as a result of grossly negligent behaviour.[348]

Directive makes such discharges of polluting substances an offence when carried out in:

- the internal waters, including ports, of a Member State;
- the territorial waters of a Member State;
- straits used for international navigation subject to the regime of transit passage, as laid down in the 1982 United Nations Convention on the Law of the Sea;
- the exclusive economic zone (EEZ) of a Member State;
- the high seas.

This regime applies to discharges from any ship, irrespective of its flag, with the exception of any warship or other ship owned or operated by a State and used only on government non-commercial service.

There are some exceptions to the ban on discharges of polluting substances, particularly where human safety or the safety of the ship is in danger.

If a ship makes an illegal discharge in an area under belonging to one Member State and then calls in a port of another Member State, the two states must cooperate with regard to this matter.

Every three years, each Member State must report to the Commission on the application of the Directive.

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[348] Official J. L.105, 13.04.2006, p. 65.

4.9.6.2 Directive 2005/667JHA

The regime of (criminal) penalties applicable to the conduct made an offence in the Directive is defined in this Decision.

Each Member State shall ensure that illegal discharges of polluting substances, participation in and incitement to carry out such discharges are penalised as criminal offences.

- These penalties must be effective, proportionate, dissuasive, and must be applied to anyone deemed responsible (the ship owner, the owner of the cargo, or any other implicated person).

For the most serious cases, i.e. instances that cause significant and widespread damage to water quality, animal or vegetables species or parts of them, or the death or serious injury of persons, each Member State must include imprisonment among possible penalties.

Other penalties may be provided for individuals, such as fines or disqualification from performing a regulated activity.

Each Member State must make the necessary provisions to ensure that legal persons can be held liable when an offence is committed for their benefit by an individual with managerial or representative powers within that body, or where such an individual has been subject to insufficient supervision or control.

Penalties against legal persons may include fines, permanent or temporary disqualification from engaging in commercial activities, being placed under judicial supervision, a judicial winding-up order, and exclusion from access to public benefits or aid.

Each Member State must take the necessary steps to establish its jurisdiction with regard to the offences stated above, particularly when committed on their territory, on board a ship flying their flag, or by one of their nationals, acting on behalf of a legal person established on their territory.

4.9.7 Bunkers Convention

The aim of Bunker convention is to authorise the Member States to become Contracting Parties to the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage.

Council Decision 2002/762/EC[349] of 19 September 2002 authorising the Member States, in the interest of the Community, to sign, ratify or accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention).

The Bunkers Convention was adopted on 23 March 2001, under the auspices of the International Maritime Organisation (IMO), with the aim of ensuring adequate, prompt and effective compensation of persons who suffer damage caused by spills of oil carried as fuel in ships' bunkers.

The Bunkers Convention fills a significant gap in the international regulations on marine pollution liability. This Convention makes for improved victim protection, in keeping with the 1982 United Nations Convention on the Law of the Sea.

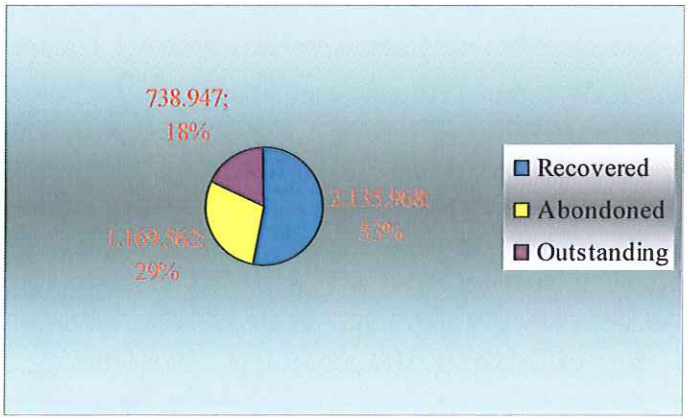

Figure 4.24 Analysis of cost recovery for UK bunkers incidents 1993-2004

This Decision, adopted by the Council of the European Union (EU) on 19 September 2002, authorised the Member States to sign, ratify or accede to the Bunkers Convention, subject to the conditions set out in the Decision.

Articles 9 and 10 of the Bunkers Convention affect the rules laid down in Council Regulation (EC) No 44/2001[350] on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

The Community therefore has sole competence in relation to Articles 9 and 10 of the Convention. The Court of Justice has ruled that the Community alone is empowered to negotiate and conclude international commitments in fields over which it has exclusive competence. However, the Bunkers Convention makes no provision for an international

[349] Official J. L.256, 25.09.2002, p .7-8.
[350] Official J. L.307, 24.11.2001, p. 28.

organisation such as the European Community to become a Contracting Party to the Convention. It will therefore be up to the Member States, after authorisation by the Community, to sign, ratify or accede to the Convention in the interest of the Community. Consequently, the objective of this Decision is to authorise the Member States to sign, ratify or accede to the Convention and to place an obligation on them, when they do so, to make a declaration committing themselves to apply Regulation (EC) No 44/2001 in their mutual relations.

4.9.8 Compensation Fund for Oil Pollution Damage

It is aim to improve the liability and compensation arrangements for pollution damage caused by ships. COM (2000) 802 final.[351]

Proposal for a regulation of the European Parliament and of the Council on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures.

This proposal for a regulation forms part of the second package of Community measures on maritime safety . Following the sinking of the Erika, the Commission came to the conclusion that the existing liability and compensation arrangements failed to offer sufficient guarantees against oil pollution damage.

The objective of this proposal from the Commission is to set up a supplementary fund covering liability and compensation for pollution damage caused by oil tankers, designated COPE (Compensation for Oil Pollution in European waters fund), to pay compensation to the victims of oil spills in European waters.

The COPE Fund would top up the CLC (Convention on Liability of the Carrier) and IOPC (International Fund for Compensation for Oil Pollution Damage) systems in force at international level.

The objective of this proposal is to ensure adequate compensation for pollution damage in EU waters resulting from the transport of oil by sea and to introduce a financial penalty to be imposed on any person found to have contributed to an oil pollution incident.

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[351] Official J. C.120 E, 24.04.2001, p.83-88.

The proposed regulation would apply to safeguard measures to prevent or minimise such risks and to pollution damage caused:

- in the territory, including the territorial sea, of a Member State;
- in the exclusive economic zone of a Member State, established in accordance with international law;
- if a Member State has not established such a zone, in an area beyond the territorial sea of that State and extending not more than 200 nautical miles.

A Fund for Compensation for Oil Pollution will be established to provide compensation to the extent that the protection afforded by the CLC Convention and the IOPC Convention is inadequate.

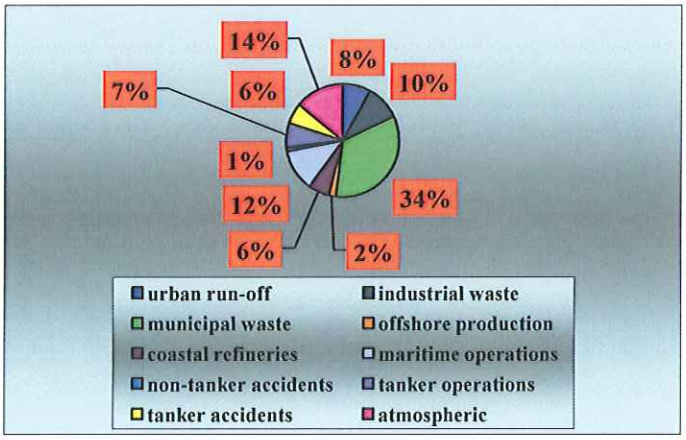

Figure 4.25 The avarage total worldwide annual release of oil from all known sources to the sea has been estimated that 1.3 million tonnes (NRC 2002). The main sources of this oil.

To this end, the COPE Fund will pay compensation to any person who is entitled to compensation for pollution damage under the IOPC Convention but who has been unable to obtain full and adequate compensation under that Convention.

No compensation will be paid by the COPE Fund until the Commission has approved the results of the relevant assessment of entitlement.

Table 4. 4 Incidence of spill by cause

OPERATIONS	< 7 Tons	7-700 Tons	700 Tons>	Total
Loading/Discharching	2767	299	17	3083
Bunkering	541	25	0	566
Other Operations	1167	47	0	1214
ACCIDENTS				
Collisions	163	254	87	504
Groundings	222	200	106	528
Hull Failures	562	77	43	682
Fires&Explosions	150	16	19	185
Other/Unknown	2221	165	37	2423
TOTAL	7793	1083	309	9185

The Commission may decide not to pay compensation to any person in a contractual relationship with the carrier in respect of the operation during which the incident occurred. Each Member State will be required to communicate to the Commission the name and address of any person who is liable to contribute to the COPE Fund. For the purposes of ascertaining who are liable to contribute to the COPE Fund and of establishing, where applicable, the quantities of oil to be taken into account for each such person, a list must be compiled and kept up to date by the Commission.[352]

Table 4. 5 Thirteen major tanker spills

Year	Name	Place	Tons
1978	Amoco Cadiz	Brittany	222000
1979	Atlantic Empress	Tobacco	160000
1967	Torrey Canyon	UK	119000
1991	Haven	Italy	114000
1976	Urquiola	Spain	100000
1980	Irenes Serenade	Greece	100000
1979	Independenta	Turkey	95000
1975	Jakop Maersk	Portugal	88000
1993	Braer	Shetland Isles	85000
1992	Agean Sea	Spain	74000
1996	Sea Empress	Milford Heaven	72000
1989	Exxon Valdez	Alaska	38800
1999	Erica	France	20000

Member States will also have to lay down a system for imposing financial penalties on any person found by a court of law to have contributed, by wrongful intentional or grossly negligent acts or omissions, to an incident causing or threatening to cause oil pollution.

Three years after the entry into force of the regulation at the latest, the Commission will submit a report on the efforts made at international level to improve the international insurance and compensation arrangements.

Figure 4.26 IXTOC I exploratory well blew out on June 3,1997 in the Bay of Campeche of Cuidad del Carmen, Mexico. The accident resulted in spilling of 140 million gallons of oil.

[352] Stevens H, "Transport Policy in the European Union (The European Union)",Palgrave Macmillan, 2004, p.162

4.9.9 Last Oil Tanker Incidents

On November 11, 2007 most unfortunate oil tanker accident occured in black sea that Volganeft-139 tanker has broken into two peaces which was carrying approximately 3463 ton of resudial oil. As a result, about 1200 tones were spread out in 1 km long and 200 m wide area. Also some 200x300 m near the tanker poop was observed.

The spill from the oil tanker was seen as potentially the worst environmental disaster in the region in recent years. More than 30,000 birds and countless fish have been killed in an "ecological catastrophe".

Figure 4.27 The Volganeft- 139 tanker was carrying about 1.3 million gallons of fuel oil when the storm sundered it.

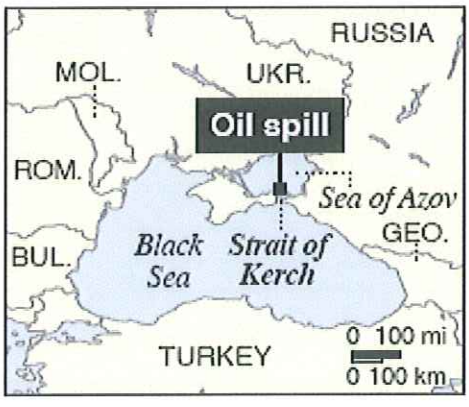

Figure 4.28 The black sea region and sea of Azov.

Another oil tanker incident occured on December 7, 2007 near Taean, 150 kilometers, or 90 miles, southwest of Seoul. The 147 000 tonne Hebei Spirit oil tanker leaked more than 10,810 tonnes, or 66,000 barrels of crude oil off South Korea's stormy west coast when it was hit by a barge.

Figure 4.29 After a spill of the coast of South Korea, a band of oil about three miles long snaked toward the coast.

The tanker was carrying 1.8 million barrels of crude oil. In the previous largest offshore oil spill in South Korea, an oil tanker spilled 30,740 barrels of crude and fuel off the south coast in 1995, costing 96 billion won, or $101 million, in cleanup operations and damages to fishermen.

Both Volganeft- 139 and Hebei Spirit oil tankers are single-hull tanker. A law requiring all tankers have double hulls will go into effect in 2010.

Consequently, the dangers of single hull tankers and the the environmental threats of them has been dramatically understood once again.

5. THE SITUATION OF TURKISH MARITIME TRANSPORT

In order to become a Member State of the European Union, acceding countries must align their national laws, rules and procedures to the entire body of Community legislation ("acquis communautaire' or in English " Community Acquis") in such a way that the relevant EU law is fully incorporated in their national legal system. This obligation continues after accession.

The transport acquis includes all the Directives, Regulations and Decisions adopted on the relevant provisions in the Treaty. It furthermore includes all the principles of law and interpretations of the European Court of Justice, all international transport agreements to which the European Community is a party, as well as the relevant declarations and Resolutions of the Council of Minister.

The approximation process consists of three major stages :

- the transposition of the acquis communautaire in the transport sector in to the national legal system by using the appropriate national procedures and mechanism (often laws passed by the parliament, sometimes Presidential, Governmental or Ministerial Decrees) ;
- its implementation, by providing the institutions and budgets necessary to carry out the laws and regulations ;
- its enforcement, by providing the necessary controls and penalties to ensure that law is being complied with fully and properly.

Every year since 1998, the European Commission assesses in the Regular Report the progresses made by Turkey towards the criteria to be met for membership, i.e. the political and economic criteria as well as Turkey's capacity to assume the obligations of membership, that is, the acquis. Furthermore, the Feria European Council in June 2000 emphassised the vital importance of the candidate countries' capacity to effectively implement and enforce the acquis, and added that this required important efforts by the candidates in strengthening their administrative and judicial structures.

5.1 TURKISH MARITIME FLAG DURING THE EUROPEAN UNION

Despite the long and arduous relationship established between Turkey and EU as early as in 1963, Turkey started accession negotiations on 3rd October 2005 only. In spite of this the Turkish shipping sector, in general and in comparison with other sectors, works in accordance with both the international and the EU norms.

Since 1958, Turkey has been a member of International Maritime Organization (IMO), where the shipping sector and maritime industry are being shaped. In 24th General Assembly of IMO Turkey has been chosen again as a member of the Council. Additionally, almost all conventions, codes and recommendations of IMO, primarily SOLAS, MARPOL, COLREG nad STCW have been included in Turkey's legislation. In fact, most of these regulations, in their entirety or in part, have also been incorporated in the EU legislation. Therefore, the Turkish shipping sector and the Turkish Shipbuilding industry have not faced and will not face any drastic change during EU harmonization period.[353]

As it is known, Turkey and Spain have realized the "Twining Project". The twining has so far created valuable imputs in certain issues specially related to the solution of environmental problems such as ;

- reception of wastes by the port facilities,
- elimination procedures of waste meterials,
- urgent intervention plans being put into operation in case of oil and harmful substances' spilling into the sea.

At present, 87% of Turkey's imports and exports are being conveyed by sea transportation and Turkish vessels' share is about 26.3%.[354] In the past years, the Turkish Maritime Fleet has been affected negatively from the global trends in trades which emerged from the Asian economic crisis of 1997. Today our fleet's average is 21.[355] The Turkish shipping sector has upgrated its standards through the implementation of continuously renewed conventions. As an example, the personel training programs of the shipping sector have improved consistently with the STCW convention. In addition, the Turkish shipping sector has earned a respectable place in the international field with its qualified schools and training programs which have been training seafarers with required qualifications in the world maritime fleets.

As it has already been mentioned above, because of Turkey's own geographical features, surrounded by seas from three sides, 87% of our imports and exports are realized through sea routes. In 2005, 181.6 million tons of imports and exports have been made through sea

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[353] Koldamir, B., "Turkey's Position Under the EU Transport Policy", II. Traffic&Road Safety International Congress, Gazi University, May 2004, p. 41

[354] Turkish Chamber of Shipping, "The Turkish Merchant Fleet Outlook in 2005", Towards the EU Accession, May 2006, p.8.

[355] State Statistic Institute, 2005

transportation. The pozitive developments which began in the world trade in 2003 – 2004 urged us to acquire new ships, built in Turkey and more often in the Far Eastern shipyards. In addition to this, throug the acquisition of second handships of high standards, Turkey's efforts to renew its fleet of 7.62 million DWT have been continuous. Likewise, regarding the Turkish shipbuilding industry, 60% of the ships of various types and tonnages and especially chemical tankers are exported to the EU countries. On the other hand, in Mega-yacht production Turkey is the among the first five countries in the World. Annually, the shipping industry brings to Turkey ; 1.5 billion dollars in building of new vessels and 1 billion $ in the maintenance and repair work, meaning a total of 2.5 billion $ foreign exchange income and, direct employement of 25.000 people and together with its sub-industries employement of 100.000 people. In conclusion with other added valued created in the nearly 500 side-industry employment branches, the Turkish shipbuilding industry creates a great potential for the Turkish economy.[356]

5.2 DEVELOPMENTS IN TURKISH MERCHANT FLEET

5.2.1 The General Numeric and Tonnage Analysis of the Turkish Merchant Fleet

When the general numerical analysis of the fleet in national and international registers is examined, it can be seen that 50.9% (702 Vessels) of the 1329 ships has been registered in the National register and 49.1% (677 Vessels) has been registered in the International register. 139 of 702 vessels registered in the national register have been acquired by importation and 563 ships have been built in Turkey ; 248 of 677 vessels registered in the International register have been acquired by importation and 429 ships have been built in Turkey. Of the 1379 ships forming the total Merchant Fleet, The majority of the ships on the numerical basis are respectively as follows : 409 Dry Cargo Vessels, 160 Fishing Boats, 119 Oil Tankers, 113 Bulk Carriers and 101 Tugs.[357]

The total capacity of the Turkish Merchant Fleet is 7.603.290 DWT. 849.944 DWT of this capacity is registered in the National Register and 6.753.346 DWT in the International register. The majorty on the basis of DWT are respectively as follows:

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[356] Turkish Chamber of Shipping, Sector Report,2005.

[357] Turkish Chamber of Shipping, "The Turkish Merchant Fleet Outlook in 2005", Towards the EU Accession, May 2006, p.5.

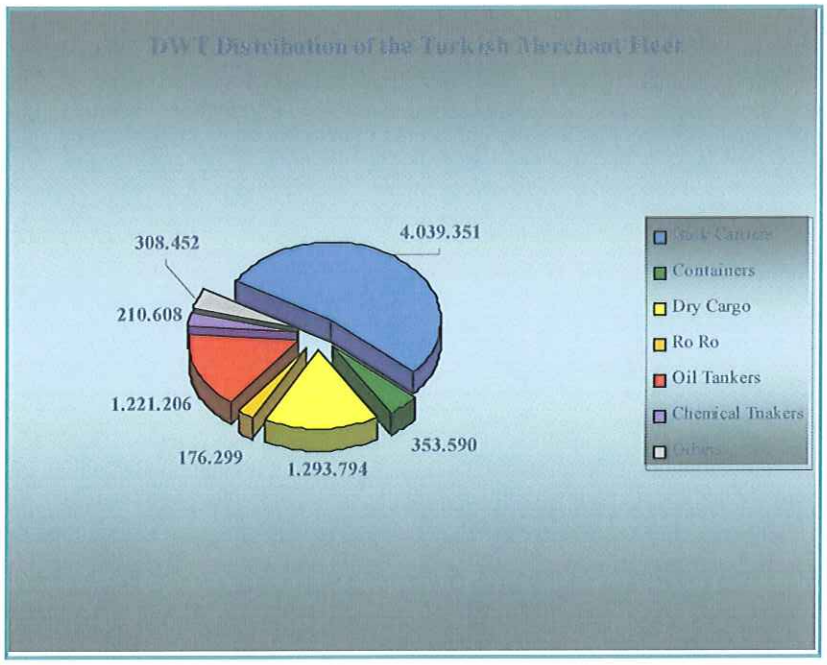

Figure 5.1 DWT Distribution of the Turkish merchant fleet[358]

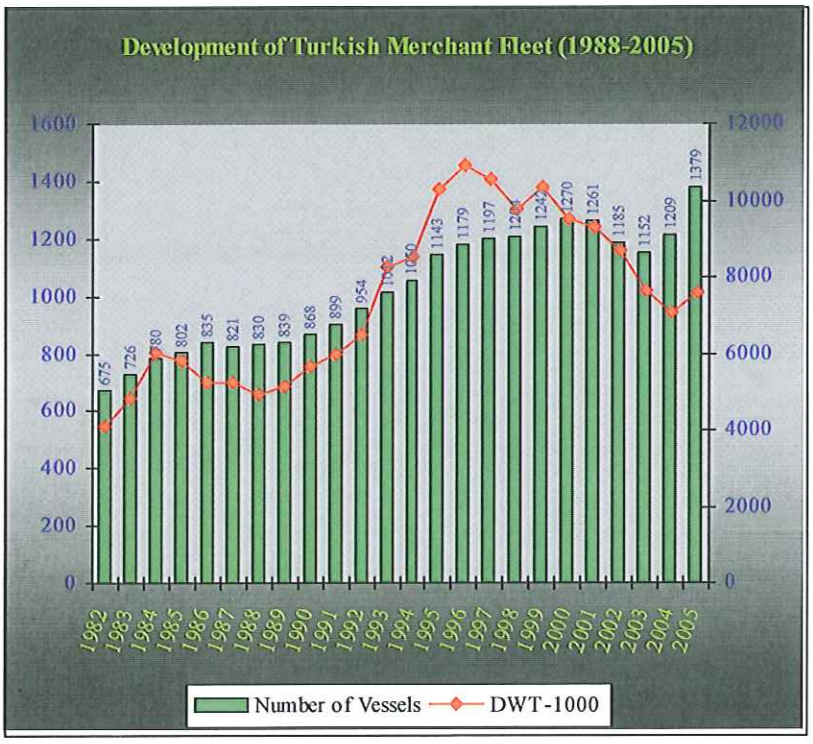

Figure 5.2 Numerical development of Turkish merchant fleet[359]

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[358] Turkish Chamber of Shipping, "The Turkish Merchant Fleet Outlook in 2005", Towards the EU Accession, May 2006, p.5.

[359] Turkish Chamber of Shipping, "The Turkish Merchant Fleet Outlook in 2005", Towards the EU Accession, May 2006, p.6.

Table 5. 1 Avarage age of Turkish merchant fleet[360]

Type of Vessels	Number	DWT	GRT	Avarage Age
Kuru Yük Gemisi	409	1293784	803700	28,0
Dökme Yük Gemisi	113	4039351	2348249	20,0
OBO Gemisi	1	77673	43487	25,0
Konteyner	31	353590	284684	9,0
Kuruyük-Konteyner	4	28939	19501	11,0
Konteyner - RO-RO	2	13820	8786	19,0
Petrol Tankeri	119	1221206	650961	25,0
Ürün Tankeri	7	14567	9312	8,0
Kimyevi Madde Tankeri	47	210608	137655	15,0
Bitkisel/Hayvansal Yağ Tankeri	3	5600	3424	21,0
LPG Tankeri	5	20956	19779	20,0
Asfalt Tankeri	2	3318	2357	45,0
Su Gemisi	15	7304	4250	24,0
RO-RO Gemisi	21	176299	383258	17,0
RO-RO Ferry – Yolcu	12	15039	50140	21,0
Feribot	32	11459	58146	15,0
Tren Ferisi	7	7291	11266	34,0
Tren Ferry/RO-RO	1	6266	15195	27,0
Yolcu/Yolcu Yük Gemisi	42	11842	58076	23,0
Balıkçı Gemileri	160	4715	42908	10,0
Bilimsel Araştırma Gemisi	4	353	1554	42,0
Şehir Hatları	47	8061	24756	28,0
Deniz Otobüsleri	22	736	8876	13,0
Şehir Hatları Arabalı	24	24452	29318	25,0
Yolcu Motorları	61	0	14537	5,0
Romorkor	101	3901	33668	23,0
Hizmet Gemileri	77	22099	33677	22,0
Mavna/SAT	2	19774	19608	7,0
Yüzer Vinç	4	287	100139	28,0
Diğer	4	0	7272	24,0
TOPLAM	**1379**	**7603290**	**5228539**	**21,13**

[360] Turkish Chamber of Shipping, Sector Report,2005.

Table 5.2 The age and tonnage distribution of Turkish merchant fleet[361]

Groups of Tonnage	Age 0-9 DWT	Age 10-19 DWT	Age 20-29 DWT	Age 30 + DWT	Toplam DWT
0-149	293	2193	294	278	3058
150-1499	16449	44911	70824	137472	269656
1500-5999	220858	160320	355368	196620	933166
6000-9999	173258	148965	294290	105474	721987
10000-34999	387999	135476	974157	319723	1817355
35000-52999	538037	165486	1046568	35224	1785315
53000-79999	415232	218608	282521	0	916361
80000-119999	0	0	0	0	0
120000+	962166	0	194226	0	-1156392
Total	2714292	875959	3218248	794721	7603290

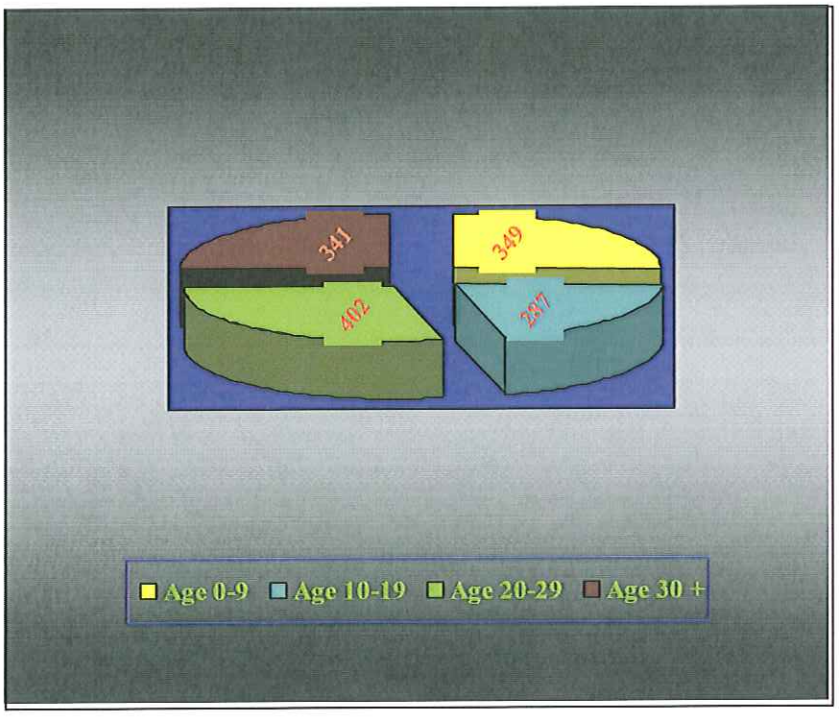

Figure 5. 3 The age distribution of Turkish merchant fleet[362]

[361] Maritime Undersecretariat, Maritime (2003-2006)
[362] Maritime Undersecretariat, Maritime (2003-2006)

5.2.2 The pozition of Turkish Merchant Fleet Among the Fleets of Neighbouring Countries and Nearby area Countries

Among the neighbours of Turkey ; Greece having the third biggest fleet of the World is on the first place, South Cyprus Greek Administration is on the second place and Iran is on the third place. Amaong the neighbouring Turkey is on the 4th place.

Table 5. 3 The merchant fleets of Turkey and its neighbouring countries "300 GT and above"

World Place	Country	Number of Ships	1000 DWT	World %	Change %
3	GREECE	1110	52474	5.6	- 5.2
10	S.CYPRUS	892	30194	3.2	- 11.8
21	IRAN	196	8950	0.9	- 0.5
24	TURKEY	840	7572	0.8	5.6
30	RUSSIA	1385	6602	0.7	- 6.6
46	EGYPT	110	1494	0.2	- 3.4
52	BULGARIA	77	1288	0.1	13.4
57	UKRANIE	234	931	0.1	1.1
70	SYRIA	146	595	0.1	- 8.3
84	ROMANİİ	44	277	0	- 32
95	IRAQ	16	105	0	- 25.2

5.2.3 Developments in the Transportation of Foreign Trade Cargoes

The shipping sector is sector where fluctuations happen in parallel with the increase and decrease of the country's imports and exports and even with the cargo interchanges in the world. The shares of the Foreign Trade Transportation OF Turkey for the period 1995-2005, as regards the routes, have been shown below in percentage rates.[363]

Table 5. 4 Imports and exports transportation (1995-2005) (%)

YEARS	SEA (TON)	RAIL(TON)	ROAD(TON)	AIR(TON)	OTHER (TON)
1995	91.1	0.8	7.7	0.2	0.2
1996	84.8	0.3	11.4	0.8	2.7
1997	85.5	0.3	12.5	0.4	1.3
1998	88.1	0.6	9.1	0.3	2.0
1999	88.9	0.5	8.7	0.2	1.8
2000	88.6	0.5	8.6	0.2	2.1
2001	87.0	0.6	10.6	0.2	1.6
2002	87.3	0.7	9.7	0.2	2.1
2003	87.6	0.8	10.5	0.1	1.0
2004	87.4	0.2	10.3	0.1	1.0
2005	86.6	0.2	11.9	0.2	0.7

Based on the data of the State Statistics Institution, in 2005 86% of Turkey's foreign trade volume has been carried by Sea Way, 11.9 % of it by Road Transportation, 1.2 % of it by by Railways, 0.7 % of it by other ways and 0.2 % of it has been carried by Airway.

[363] Turkish Chamber of Shipping, Sector Report,2005.

Compared with the year 2004, in 2005 the volume of foreign trade transportation by sea decreased in the rate of 1.4% ; as to the road transportation, it increased in the rate of 1.6%.

5.3 EVALUATION OF TURKISH MARITIME TRANSPORT

Turkey has participated and contributed actively to the international activities on the relevant pan-European transport corridors, in particular the Black Sea pan-European transport area, for which it has acted as chairman since July 1999. An inventory of the ports in the region has been prepared.

On road transport, Turkey became a contracting party to the European agreement on the work of personnel of vehicles engaged in international road haulage (AETR). However, although accession to the European agreement concerning the international carriage of dangerous goods by road (ADR) was already planned for 1999, it has not yet been concluded. In 2001, Turkey signed the INTERBUS Agreement on the International Occasional Carriage of Passengers by Coach and Bus. Adoption of an action plan, within a clear timeframe, for the transposition of the road transport acquis into Turkish legislation is recommended. A road transport Law adopted in 2003 provides a general framework for both national and international road transport market activities. Following the adoption of the framework Law, a regulation was adopted in 2004, setting forth implementing rules for road transport activities, including licensing procedures, and setting out the rights and obligations of road transport operators and vehicle requirements.

However, there is insufficient capacity for implementing legislation, particularly in relation to road safety. In 2005 the average number of road accidents in Turkey was still six times the European Union (EU) average. Further efforts must also be made to align legislation on the transport of dangerous goods.

As regards rail transport, an action plan has been adopted which aims to restructure the railway sector by 2008 and sets out a road map for legislative alignment with the revised railways acquis. However, Turkey must still significantly develop its legislative and administrative framework in this area. The rail sector is still not truly liberalised or independent from a commercial point of view. Furthermore, substantial investment is needed to modernise rail infrastructures and ensure interoperability with the conventional European rail network.

The acquis is far from being implemented in the field of air transport. Services have been put into operation at airports open to international traffic. Slot allocations are made in accordance with IATA (International Air Transport Association) rules. However, common aviation rules and Eurocontrol standards are still not fully transposed.

The Turkish aviation sector is undergoing privatisation, although the latest attempted privatisation of Turkish Airlines was unsuccessful. The capacity of administrative bodies needs to be increased and an independent accident investigation body established. Lastly, the Commission has invited Turkey to negotiate a "horizontal agreement" as a candidate country.

In the field of maritime transport, Turkey is in the early stages of aligning legislation and increasing administrative capacity. However, no progress has been noted in lifting restrictions on ships trading with Cyprus and those sailing under the Cypriot flag. Access to the cabotage market remains restricted solely to Turkish-flagged vessels. As regards maritime safety, the state of the Turkish fleet compared with the EU fleet remains a matter of serious concern. Statistics show that the detention rate for Turkish-flagged vessels is very high, despite improving in 2004. There is therefore an urgent need to strengthen Turkey's maritime administration in order to improve the safety of Turkish ships. Turkey should try to meet all its flag State obligations as a first priority, followed by its port State obligations, by ensuring that there are a sufficient number of trained inspectors to apply the acquis. Turkey is still on the Paris Memorandum of Understanding blacklist despite dropping from the "very high risk" category to the "high risk" one.

An ambitious five-year Maritime Transport Action Plan for the enhancement of maritime safety was adopted in 2003. This Action Plan sets out a road map for legislative alignment with the maritime safety acquis, measures aimed at strengthening administrative structures (in the area of flag State and port State control) and training and equipment needs. However, the implementation of this Action Plan was behind schedule in 2005.

More generally, Turkey's administrative capacity to implement and apply legislation effectively needs to be improved in all sectors of transport policy.

6. CONCLUSION AND RECOMMENDATIONS

This academic research aims to give detailed information about the European Union (EU) Maritime Transport Policy.

At the end of this inquiry, I want to determine important points of EU's general policies of Maritime Transport and on future approaches.

There are four central fields in which the European Union may improve the relations between Member States.

- One would be increasing employment and competitiveness within the marine industry.

There was agreement amongst everyone that it is necessary to continue to strengthen employment and competitiveness within Europe. And for this success of the European economy, the global competitiveness of maritime transport, of shipbuilding, of ship equipment building, of the suppliers, and of the port economy is of considerable importance for the European Union.

They would accomplish increased employment by enhancing the training programs, increasing salaries and benefits. This would attract dedicated and quality employees as well as create longevity. In regards to shipping, the European Union could improve the infrastructure and improve communication in the transportation chains without increasing bureaucracy. For instance, the European Union could connect the inland transportation infrastructure. Maritime and coastal tourism plays an important role in boosting the economy. People take refuge on the coast for days up to months at a time. Therefore, it is important to preserve the history, culture and environment of these regions. With increased tourism a community needs a strong infrastructure and city planning. Other benefits from tourism are higher employment rates, a stronger economy along with regional recognition.

There are two pre-eminent goals of an integrated maritime policy, that is first of all the improvement of the competitive position and of the employment perspectives of the maritime industry, and secondly an optimized and co-ordinated use of the economic potentials of the marine area.

It is necessary in this context to improve the infrastructure in the EU to develop and also use innovative technologies and to improve the interfaces in the transport chains and to enable shipping to fulfil its tasks and functions and to exhaust its potentials.

In this context it also turned out that it is very important to have a qualified, well-trained, motivated personnel and the mayor of this city in his address said that the best investment is the investment into human beings.

It has became clear that the maritime sector offers attractive careers and also offers very favourable employment opportunities. Talking to the social partners that they should continue this development, which currently is a very positive development, and also extend it into the future.

- Another area in which the European Union could improve upon is shared responsibility of the seas. They should not only talk about responsibility, they should also assume responsibility.

There are some certain effects of global warming, which we are feeling very much at the moment. For example the rise of the sea level, changes in the precipitation regime, the increase of storms, the increase of water temperatures, and also the melting of polar ice.

Everyone is responsible for the on going state of the marine environment and the European Union has the potential to bring communities together. A healthy marine environment is necessary in order to continue our own way of life. They should increase awareness and protection by educating on the local level and as well as the international level. The changes in our climate indicate that such awareness and increased protection are essential. One way to protect our oceans is to monitor and control over fishing by increasing the enforcement of illegal, unreported and unregulated fishing. Replace these methods with education and proven sustainable fishing methods.

- Research and innovation are other areas in which the European Union can achieve growth and employment in the maritime industry. Research and innovation are indispensable preconditions for growth and employment in the maritime industry and this, of course, is something that Europeans all want to achieve.

To address the global challenges such as climate change and biodiversity loss, research needs to be a top priority. They can achieve this by regular monitoring of marine life and environment. Shared information on research and cooperation between communities, industries and governments will guarantee the survival of our marine life as well as our own.

The federal government has decided therefore to be a pioneer in this field and to establish for the better co-ordination of maritime research and maritime technology in Europe a

concrete project. They should do that together with European partners and the aim is to establish a so-called European maritime data centre.

- Last one would be life on the coast.

It is by far not the least important one, is improvement of life on the coast and they have intensively dealt with the fact that many port cities are facing the challenge to use economic structural change as an opportunity and on the other hand also to use it for example for the development of new industrial branches, also for the purposes of tourism, which would be a high-quality coastal tourism.

A regional as well as supra-regional exchange of experience should take place, an exchange also of best practice examples and co-operation models for example for sustainable coastal tourism, for urban development projects, for example under the title "living on the river" or "living on the sea" and for the protection of the maritime heritage.

Regional planning should be integrated by means of spatial planning and an integrated coastal zone management on the basis of uniform principles in international co-ordination, but mainly based on decisions at local and regional level.

In closing, there are a number of ways the European Union can improve on their existing guidelines and with the assistance of Member States and local communities. It is necessary to weight and to concretize the proposals in the central fields of action, maritime transport and economy, research and technology, and sustainable protection of the marine environment.

The Ottoman admiral and most honorable seaman and conqueror of seas Barbaros Hayreddin Pasha said that " who command seas, commands world". As Barbaros said, in this context maritime is the future that will affect every aspects of life. And European Union has been trying to act on this policy.

I hope that this academic inquiry will give people some fundamental ideas about the Maritime Transport Policies of European Union.

Thank you,

Hayreddin Taylan ADALI

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Eurostat, national statistics. **(1)** Passenger traveling between 2 countries are counted twice in the aggregate EU-25. **(2)** CZ, EE, LV: upto 2001, air passenger data include transit. **(3)** BG: upto 2001, only public sector enterprises.Including transit for 1995-1999. **(4)** SK: upto 2001, data consist only of transport enterprises enrolled in Business register with 20 and more employees. **(5)** TR: upto 2001, no of departures and arrivals in external lines reported to the General Directorate of State Airports. **(6)** CY: Excluding transfer passengers. **(7)** Excluding direct transit passengers.

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In the case of the requirement of an authorisation for a certain activity in a Member State for the purpose of protection of consumers (e.g., in insurance), the conditions cannot duplicate equivalent statutory conditions that have already been satisfied in the state in which the undertaking is established. In the case of the requirement of diplomas or licences, as to which there is a general lack of harmonisation on the European level, a state may demand the provider of services to hold a diploma, but it has to take into consideration the diplomas, certificates and other evidence of qualifications which the person has acquired in order to exercise the same profession in another Member State. A member state is not permitted to impose a general requirement to pay the same financial charges (e.g., social security contributions) on all persons providing services who are established in other Member States, irrespective of whether they paid those charges in the state where they are established. See Jean-Claude Seche, Union Européenne et nationalité, salaries, établissements et services: les discriminations in Union Européenne et nationalité (1999).

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International Tanker Owners Pollution Federation, Ltd.

It is avaiblable to see on http://ec.europa.eu/environment/urban/urban_transport.htm

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On October 7, 1985 four heavily armed terrorists representing the Palestine Liberation Front (PLF) hijacked the Italian cruise ship Achille Lauro, with some 100 mostly elderly passengers on board, in Egyptian waters.

One has to realize that EC Member States decide themselves what services are going to be classified as services of general interest in their state and what undertakings are going to be entrusted with their provision. The Court of Justice gives its preliminary ruling on the basis of the facts given by a national court and it cannot question them. In the Corsica Ferries case it was outside of the competences of the ECJ to pronounce itself on the fact of institution of mooring services as services of general interest. It could only answer the

questions. The only institution competent to challenge the legislative solutions of a Member State is the Commission. First, it gets in touch with the state and and informs it about the objections. If the state does not convince the Commission about its reasons and does not change its leg-islation, the Commission can bring a case to the ECJ in a so-called infringement procedure. Only then the Court can state that a Member State failed to fulfill its obligations.

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The ship-owner pays an amount of tax, which is payable irrespective of the company's actual profits or losses, and which is linked directly to the tonnage tax operated. Member states currently appliying a tonnage tax system are, for example, the UK, the Netherlands,

Denmark, and Ireland. See, i.s. , Commision Decision of 2 August 2002, N 504/2002, Ireland – Introduction of a tonnage tax.

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