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Report

drawn up on behalf of the Committee on Regional Policy, Regional Planning and
Transport

on the ~~present~~ state and progress of the common transport policy

Rapporteur: Mr H. SEEFELD

1.2.3

PE 54.492/fin.

On 5 July 1976 Mr Mursch, Mr Albers, Mr Delmotte, Mr Fröh, Mr Gerlach, Mr Giraud, Mr van der Gun, Mr Hamilton, Mr Härzschel, Mr Klepsch, Mr McDonald, Mr Knud Nielsen, Mr Noè, Mr Nyborg, Mr Schwörer, Mr Seefeld and Mr Vandewiele tabled a motion for a resolution on an action against the Council of the European Communities because of the latter's failure to act in respect of measures in the field of the common transport policy (Doc. 202/76).

On 5 July 1976 the motion for a resolution was referred to the Committee on Regional Policy, Regional Planning and Transport as the committee responsible and to the Political Affairs Committee and the Legal Affairs Committee for their opinions.

The Legal Affairs Committee delivered its opinion on 20 January 1977. The Committee on Regional Policy, Regional Planning and Transport and the Political Affairs Committee decided to consider the motion for a resolution in a wider context.

By letter of 26 April 1977 the Bureau of the European Parliament authorized the Committee on Regional Policy, Regional Planning and Transport to draw up a report on the present state and progress of the common transport policy.

At its meeting of 26 May 1977 the committee appointed Mr Horst Seefeld rapporteur.

On 24 November 1977 the Commission of the European Communities forwarded to the Council a document entitled 'Priority business for a Council working programme to 1980' (COM (77) 596 final, 24 November 1977), which was also forwarded to the European Parliament for its information. This working programme refers to the 1973 'Communication from the Commission to the Council concerning the development of the common transport policy' (Bulletin of the European Communities, Supplement 16/73) and to the resolution adopted by Parliament on the basis of Mr Mursch's report (Doc. 215/74) (OJ No. C 127, 18.10.1974, p. 24). Although no consultation was envisaged, the following report states its view on the working programme.

The Committee on Regional Policy, Regional Planning and Transport considered the report at its meetings of 22 September, 26 October and 28 November 1978.

At the meeting of 28 November 1978 the motion for a resolution and explanatory statement were adopted unanimously with two abstentions.

Present: Lord Bruce of Donington, chairman; Mr Nyborg, vice-chairman; Mr Seefeld, rapporteur; Mr Albers, Mr Delmotte, Mr Fuchs, Mr Haase, Mr Hoffmann, Mrs Kellett-Bowman, Mr Osborn and Mr Schyns.

The opinion of the Legal Affairs Committee is attached.

C O N T E N T S

A.	MOTION FOR A RESOLUTION	Page 5
B.	EXPLANATORY STATEMENT	9
I.	<u>The present position with regard to Community legislation in the transport sector</u>	10
	1. Outline of existing Community regulations and Commission proposals submitted to the Council and not yet dealt with .	10
	2. The Council's failure to take decisions and the 'small steps' policy	25
	3. The significance of the 1973 Commission communication and the priority working programme for 1978-1980 - the need for the Council of Ministers to adopt a basic plan	27
	4. Outline of the regulations still required to achieve the desired degree of integration	29
II.	<u>The common transport policy as an essential element in securing the Community's position and achieving economic and monetary union</u>	31
	1. A liberal common transport market as a necessary consequence of the Economic Community and of the efforts to achieve economic and monetary union	31
	2. Restoration of confidence in Community policy in the transport sector	32
	3. The common transport policy in a race against the clock! .	33
III.	<u>A strategy for the further development of a common transport policy</u>	36
	1. A way out of the controversy between the advocates of a 'small steps' policy and those who call for an overall plan	37
	2. Pragmatic priorities or systems analysis?	41
	3. A network plan for the common transport policy	43
IV.	<u>Network plan for a common transport policy</u>	44
	1. The aim: A liberal common transport market and provision for the Community of the best possible transport services.	44
	2. Road transport	46
	3. Inland waterway transport	49
	4. Railways	51
	5. Ports	52
	6. Sea transport	54
	7. Air transport	54
V.	<u>Proposals for improving the working methods of and cooperation between the Community's institutions as regards transport policy</u>	56
	1. Working methods of the Commission	56
	2. Cooperation between the Commission and the Council	58
	3. Cooperation between the Commission and Parliament	58
	4. Cooperation between Parliament and the Council	58

	<u>Page</u>
5. Working methods of the Council	60
6. The working methods of the Permanent Representatives' transport working party	62
7. Working methods of Parliament	64
8. Working methods of the Economic and Social Committee	64
9. The possibility of instituting proceedings before the Court of Justice	65
10. Summary of the proposals	68
 <u>Annex</u> : Motion for a resolution tabled by Mr Mursch and others (Dcc. 202/76)	 70
 Opinion of the Legal Affairs Committee	 71
I. Introduction	72
II. Observations of a legal nature	73
A. Parliament's right to bring an action	73
B. The 'call to act': procedural considerations ...	75
C. The subject of proceedings: criteria	77
D. The 'definition of position'	78
E. Time limits: a procedural proposal	80
F. Problems relating to Article 75	81
III. Conclusions	82
IV. Minority opinion	83

A

The Committee on Regional Policy, Regional Planning and Transport hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on the present state and progress of the common transport policy

The European Parliament,

- having regard to the communication from the Commission to the Council on the development of the common transport policy,¹
- having regard to the communication from the Commission to the Council on priority business for a Council working programme to 1980²,
- having regard to the report of the Committee on Regional Policy, Regional Planning and Transport and to the opinion of the Legal Affairs Committee (Doc. 512/78),
- whereas it wishes to maintain the degree of integration so far achieved within the Community and to make further progress towards economic and monetary union,
- whereas it is an indisputable fact that the present position and further development of the Community will be placed in jeopardy without a common transport policy,
- whereas it realizes that as a result of the lack of a common transport policy economic decisions even now constantly lead to misplacements of capital and labour, ill-judged regional distribution of economic activities and structural distortions in Europe's economy, since although tariff barriers have been removed distorted transport costs have come to play a role in international trade similar to that formerly played by customs duties,
- whereas it recognizes that it will become increasingly important in the next few years for the Community to be capable of taking action on transport policy matters vis-à-vis third countries,
- whereas it recognizes the need to restore the confidence of the public and of interested economic circles in the achievement of a common transport policy, this confidence having been badly shaken by developments in the years since the foundation of the Community.

1. Calls for the immediate introduction of a coherent common transport policy having regard to the groundwork completed by the Commission and Parliament over the period 1973 - 1978 and to the individual measures so far adopted by the Council;

¹ Doc. 226/73

² COM (77) 596 final, 24 November 1977

2. Welcomes the fact that the Commission has followed up its 1973 Communication on the development of a common transport policy by submitting to the Council in November 1977 a programme of priority actions for the period 1978 - 1980, and supports the Commission in this initiative;
3. Regrets, however, that the Commission did not follow up this communication along the lines suggested in the European Parliament's resolution of 25 September 1974¹;
4. Regrets also that the Council's discussions on the fundamental principles of transport policy have as yet produced no results and that at its meeting of 20/21 December 1977 the Council merely 'took note' of the working programme and the priority actions and said that it intended 'to take them into account as far as possible in its future proceedings', thereby doing nothing to dispel the uncertainty that prevails with regard to transport policy during the coming years;
5. Welcomes the fact that at its meetings in the second half of 1977 the Council at least took steps to avoid a complete absence of legislation in some sectors in the Community, and that once again some modest progress was made in extending Community regulations;
6. Calls on the Council at one of its forthcoming meetings to draw up a working programme based on Parliament's proposals and the Programme of priority actions, proposed by the Commission in 1977;
7. Calls on the Commission to take new steps to prepare the ground for these decisions and furthermore to submit to the Council, on the basis of its 1973 communication and the 1977 programme of priority actions, a coherent network plan for the introduction of a balanced common transport policy and, as early as possible, a Council work programme for the years after 1980, in the form of a proposal for a resolution, on which the Council could consult the directly elected Parliament as soon as possible after the latter's constitution;
8. Urges that priority be given to the following transport policy objectives, which are of immediate importance:
 - improvement of the financial situation of the railways, inter alia by encouraging cooperation between them;
 - improvement of the situation of transit traffic through Austria and Switzerland, in particular by allocating road costs fairly, improving infrastructures and encouraging combined transport methods;
 - defence of the EEC's sea transport interests against the expansionist

¹ OJ No. C 127, 18.10.1974, p. 24

policy pursued by some third countries;

- promotion of air transport safety and adaptation of Community policy to the major changes about to be made to international air transport policy;
- regularization of the Community's foreign relations in the inland waterway transport sector, in particular through the Community's accession to the Mannheim Convention;

9. Calls on the Council and Commission to review the Community's working methods in the transport sector, taking particular account of the following proposals:

- the staff of the Commission's Directorate-General for Transport should be increased;
- the Commission should take more collective action on transport questions;
- there should be permanent contacts between the Commissioner responsible for transport questions and the Transport Ministers outside Council meetings ('hot line');
- the Council of Transport Ministers should meet more frequently, at least four times a year;
- the Council should not meet only to discuss documents which are ready for signature but also to take general policy decisions on the basis of Commission proposals;
- the Permanent Representatives Committee (transport working party) should be given clear directives and allowed greater freedom of negotiation within the framework of an overall approach;
- the Council should expand its own secretariat in the transport sector to prevent the occurrence of bottlenecks;
- the Permanent Representatives' work on transport policy should be performed more rapidly in several specialist groups (e.g. for (a) sea transport, (b) ports, (c) air transport, (d) transport taxes and importation of road costs, (e) transport safety, etc.);

10. Reserves the right to reconsider, immediately after direct elections, the question of instituting proceedings against the Council before the Court of Justice of the European Communities under Article 175 of the EEC Treaty for failure to take action in the transport sector;

11. Calls on the appropriate bodies of the parties, political groups and governments to ensure that a sufficient number of transport specialists are Members of the European Parliament and the Economic and Social Committee;

12. Impresses urgently on the Council, the Commission and the public that unless the Community succeeds in the very near future in establishing an intra-Community common transport system and makes itself capable of effective action in the field of transport policy vis-à-vis the outside world it will be beset by grave dangers that will undermine its entire economic position;
13. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

EXPLANATORY STATEMENT

1. This report forms part of the series of outline reports submitted to the European Parliament on the question of the introduction of a common European transport policy. Your committee has been able to draw upon the earlier reports mentioned below; unfortunately so little progress has been made on a Community transport policy that the facts set out and the conclusions drawn in them are still valid. Your committee will try to repeat as little as possible of the material already set out in these earlier reports.

2. There does not now seem to be very much need to discuss aims and objectives, as these have been clearly spelled out by Parliament in its earlier reports and resolutions. This report is therefore more concerned with the ways and means of implementing these objectives.

3. The report accordingly begins with a brief critical analysis of the present situation with regard to Community legislation in the transport sector and attempts to outline as clearly as possible the reasons for the inadequate progress on a common transport policy (Section I).

It then goes on to explain once again the need for a common transport policy and the drastic consequences that could ensue in the next few years if such a common transport policy is not established in the near future (Section II).

An attempt is then made to work out a strategy for the implementation of a common transport policy (Section III) and to demonstrate, at least in broad outline, how an appreciation of the interaction between all transport policy measures - which may be illustrated by means of a network plan - can help to show which important basic decisions on transport policy must be taken with the utmost dispatch, as without these cornerstones no progress or expansion is possible (Section IV).

Finally, your committee puts forward proposals for improving the institutions' working methods, as it has become clear that many important decisions have not been taken because of shortcomings in the Community's decision-making machinery (Section V).

SECTION I

The present position with regard to Community legislation in the transport sector

4. This section follows more or less the same order as that adopted by the Commission in its Documentation Bulletin B/3: 'Transport bibliography, 1978'. In an effort to prune the text of footnotes, we shall refer to this publication when quoting Community legislation.

1. Outline of existing Community regulations and Commission proposals submitted to the Council and not yet dealt with

5. After the last meeting of the Council of Ministers in November 1978 the position with regard to Community legislation on transport questions was as follows:

Legal basis in the Treaties

6. The legal basis for the common transport policy consists of Articles 3(e), 61 and 74-84 of the EEC Treaty, together with all general provisions of the Treaty, insofar as they are not declared by special provisions to be inapplicable to the transport sector. A further legal basis is Article 70 of the ECSC Treaty and Article 10 of the Convention on the Transitional Provisions of the ECSC Treaty. The period of validity of these provisions has expired, but the Court of Justice of the European Communities has ruled that they still remain valid, as far as points of fact are concerned.

7. Without wishing to analyse this legal basis in the Treaties more closely, as this has already been adequately done in earlier reports by your committee and by the Commission of the European Communities, it should be clearly pointed out once again that, while the Treaties set out no clear legal basis for a transport policy, they make it very plain that they are charging the Community's institutions with the task of introducing such a common policy.

Discussion of the basic principles of a common transport policy

8. The Commission has made several attempts to steer the Community towards the broad outlines of a common transport policy. The most important steps taken in this connection were the memorandum of 1961, the action programme of 1962 commissioned by the Council of Ministers, which still kept an open mind on the ideas set out in the memorandum, and the Commission communication of 1973, which was followed in 1977 by a new working programme.

9. The Council has never approved an overall plan; in fact, so far it has devoted to the Commission's views, which still remain valid, only a number of extremely vague discussions, which have led to no practical results.

10. For its own part, it has adopted a limited number of decisions of principle, which, however, have likewise failed to yield any practical results.

11. Possibly the nearest approach to a breakthrough on a common transport policy was made on 22 June 1965, when the Council adopted a resolution on a prices policy. This resolution was made possible by the fact that the advocates of a controlled transport market agreed to a somewhat greater degree of price flexibility within the framework of a tariff margin, while the advocates of a transport sector organized as far as possible along free enterprise lines agreed to a somewhat greater degree of price control. Unfortunately, however, only a few days after this resolution was adopted the Community's work was brought to a halt for completely different reasons, namely, because of the 'empty chair' policy pursued by the French representatives. During the ensuing standstill on transport policy it was realized that the price policy agreed upon could not be implemented unless a common capacity policy was worked out at the same time. On 20 October 1966 the Council adopted a resolution on the organization of the transport market, which was not only never published but, in fact, never achieved any positive results. At any rate all the proposals drawn up by the Commission on the basis of these resolutions simply remained stuck in the Council pipeline.

12. Later still, for example on 14 December 1967 and 7 December 1970, the Council adopted various other resolutions on transport policy in general and on cooperation between the railways, but these also failed to yield any practical results.

13. The only time in all these years when the Council laid down a solid foundation for future legislation was when it adopted an outline decision on harmonization; this was also in the year 1965.

The decision in question is that of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway. Like the action programme that preceded it, this decision is only a collection of instructions to the Commission and dates by which the Council undertook to adopt the relevant proposals. It is extremely rare for legislators in the Member States to enact legislation of this kind; however, in view of the nature of the Community's institutions and the way in which agreements are reached and decisions taken in the European Community, it would appear to be a feasible approach, if - and this is the difference between a successful decision of this kind and unsuccessful action programmes - the Council is sufficiently convinced of the value and appropriateness of the measures proposed. At all events, this outline decision could possibly serve as a model for future legislation in the transport sector.

The decision gave clear instructions with regard to a fairly wide range of issues and became the basis for all future work on social harmonization, the revitalization of the railways, competition rules in transport and, less successfully, fiscal harmonization.

14. The European Parliament has made important contributions to the debate on developing the basic outlines of a common transport policy. As far back as 1957 the Common Assembly submitted the first Kapteyn report, which contained a fully elaborated common transport policy. This was followed in 1961 by the second Kapteyn report (Doc. 161/61), a report by Mr Müller-Hermann (Doc. 18/21/62) containing an opinion on the Commission memorandum and a report by Mr Brunhes (Doc. 132/62) containing an opinion on the Commission's action programme. After more than ten years these were followed by Mr Mursch's report (Doc. 215/74), which contained an opinion on the 1973 communication from the Commission.

15. The European Parliament adopted all the resolutions in question with the utmost unanimity, and in Mr Mursch's 1974 report it is expressly stated that the guidelines laid down in the pioneering Kapteyn reports of 1957-61 are still valid even now.

16. The present report draws also on these earlier reports. Your committee notes with regret that the basic principles of transport policy are still being discussed and that the principles laid down earlier by Parliament have never been explicitly adopted by the Council of Ministers. In view of radical changes in the membership of Parliament it has once again become useful and necessary to reaffirm the line to be taken on transport policy, which must strike a balance between control and free enterprise. Your committee considers it important that this general line be reaffirmed, even if the majority in favour of it might not be as overwhelming today as it was previously.

17. The Commission has indicated on various occasions that it feels that a kind of 'tacit agreement' has emerged on the line on transport policy proposed by the Commission and Parliament. Unlike your committee, it no longer considers that any useful purpose would be served by discussing these basic questions in the Council.

18. Your committee does not feel that a tacit agreement, which is only presumed to exist, can be an adequate basis for the speedy introduction of a common transport policy. It feels that unless the direction to be taken is clearly indicated, there can be no question of winning the confidence of those sections of the population and those economic undertakings directly concerned, or of expecting them to make the sacrifices and concessions that a common transport policy will require.

19. In this report therefore your committee puts forward a proposal for a new strategy for the further development of a common transport policy. This strategy will provide a means of escaping from the dilemma caused by the fact that the Council has compelled the Commission to pursue a policy of small steps.

Consultation procedures

20. The agreement under the Treaty to pursue a common transport policy made it necessary, in the transitional period until this transport policy was established, a period which unfortunately seems to be prolonged indefinitely, to take steps to ensure that at least the Member States' regulations on transport policy did not diverge any further from each other than was the case when the Treaty was concluded. In order to prevent this happening, a consultation procedure was established as far back as 1962, in accordance with which the Member States are obliged to notify the Commission of all new measures in the field of transport policy before they enter into force. The Commission then adopts an opinion on these measures and gives its recommendations. On the basis of this consultation procedure, the last amendment to which was made in 1973, the Commission has delivered a relatively large number of opinions together with recommendations (83 opinions in all at 15.5.1978).

21. By and large the Member States seem to have followed the Commission's recommendations; at any rate no actions have been brought before the Court of Justice as a result. It must be admitted, however, that in making its recommendations the Commission was operating from a position of extreme weakness. In evaluating new draft legislation in the Member States it had to state its case on the supposition that there would be in future a common transport policy, something that has never been confirmed by the Council. If it objected to one proposed measure or another on behalf of the Community's general interests, it did so in the absence of any Community legislation and merely on the basis of the presumed tacit agreement with regard to the form any future common transport policy would take.

22. Consultation procedures for infrastructure policy were also agreed upon in 1966 (these were substantially revised in 1978) and for sea transport in 1977.

From 1966 to 1978 the consultation procedure on infrastructure policy functioned extremely inadequately, as the Member States normally notified the Commission of their projects for building transport links only at a very late stage in the planning, when virtually nothing could be changed. In at least one spectacular case (the Channel Tunnel) the Commission was obliged to learn from the newspapers, notwithstanding the consultation procedure, that the British Government had abandoned the project. It cannot as yet be predicted whether the new procedure, involving a special committee to advise on infrastructure projects, will produce any better results.

23. On 13.9.1977 a consultation procedure for sea transport was introduced to deal with relations with third countries and international organizations. This procedure was widely welcomed as the first step towards a common shipping policy, but the Community's position in all efforts to cooperation vis-à-vis the outside world is bound to remain extremely weak, unless at the same time a greater degree of internal unity is achieved in the form of a common shipping policy within the Community.

Advisory committees

24. In order to assist the Commission and the Council a number of advisory committees have been set up since 1958 in which interested parties can make their views known or the Commission is able to maintain permanent contact with experts.

25. The advisory committees set up by virtue of the Treaty itself should first be mentioned. These are the Economic and Social Committee, which is helping to draw up the blueprint of the common transport policy through its section for transport and communications, and the advisory committee mentioned in Article 83 of the Treaty.

26. On the basis of its own decisions the Commission has set up three joint committees to advise it on social matters relating to transport - one in 1965 for road transport, one in 1967 for inland waterway transport and one in 1972 for rail transport. There is still a crying need for a committee of this kind to deal with social questions in the sea transport sector, but one will presumably be set up shortly to supplement the consultation procedure, particularly in view of recent shipping disasters, which to some extent have social implications.

27. On the basis of various Council regulations advisory committees have also been set up for cartels (1968) and subsidies (1970) in the transport sector, as well as advisory committees on international road transport tariffs (1968) and the aforementioned committee on transport infrastructures.

28. For many years now the committees dealing with ECSC railway tariffs have been functioning smoothly - the committee for direct ECSC tariffs since 1955 and the committee on cooperation with Switzerland since 1956 and the committee on cooperation with Austria since 1957. Apart from these committees the Commission is empowered at any time to convene ad hoc groups of experts to advise it.

Competition rules

29. After ten years during which the application of the Community's general rules on competition had to be repeatedly suspended for transport matters, a regulation on special competition rules in the transport sector was finally

adopted in 1968. Although various mergers and practices specified in the Council regulation of 19 July 1968 are forbidden, the number of derogations and concessions that may be granted by the Commission is so large that in practice this piece of legislation merely provides a check on abuses.

Fiscal harmonization

30. A common transport policy is pointless unless it is accompanied by harmonization of the most important taxes peculiar to the transport sector, namely taxes on oil and motor vehicles, and this is precisely the area in which the Community has as yet completely failed to make any progress.

The 1968 Council directive concerning the duty-free importation of fuel contained in the ordinary fuel tanks of commercial motor vehicles is inadequate and in continual danger of being circumvented. It is evident even from this relatively unimportant measure that no progress is possible unless the overall context is borne in mind. Unless rules are adopted to regulate the charges for the use of transport infrastructures and to deal with competition between ports, no further progress can be achieved in this field.

The Commission proposal to raise the duty-free fuel allowance from 50 to 100 litres failed because the Commission had not taken into account the implications for competition between ports.

31. The question of harmonizing motor vehicle taxation has been in abeyance since 1965 in spite of the decision to adjust the tax assessment criteria, and the Commission's implementing proposals have not yet been adopted by the Council, even though they were submitted in 1968. The Commission has not yet plucked up the courage to consider harmonizing taxation rates, and Commission proposals on the harmonization of taxes on oil, or at any rate taxes on fuel, seem just as utopian today as they did in 1958. Nevertheless they are an absolute necessity, if we are ever to have a free transport market.

Harmonization of State interventions

32. Under this heading the Commission includes all Community measures dealing with transport requirements and subsidies or, to be more precise, with problems mainly affecting the railways.

Articles 77 and 78 of the EEC Treaty indicate that the Community must help to shoulder the burdens that the railways have to bear because they provide a public service, and must contribute to the aids granted to them for the discharge of these obligations and for the coordination of transport.

33. With this in mind the Commission submitted proposals for a fairly complete and extremely coherent system regulating the financial relationship between the Member States and the railways, as well as a programme for the revitalization of the railways. 1969 saw the adoption of a regulation concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, and a regulation on the normalization of the accounts of railway undertakings. In 1970 there followed a regulation on aid in the transport sector, in 1975 a decision on the improvement of the situation of railway undertakings and the financial relations between such undertakings and the Member States, and in 1977 a regulation on comparability between the accounting systems and annual accounts of railway undertakings.

Taken together, these rules form the most coherent package of Community legislation enacted so far.

34. In its biennial report on the implementation of these measures, however, the Commission is forced to admit that all the fine regulations still amount to nothing more than 'sound and fury', since the Member States have not played their part by eliminating public service obligations, but have used all the derogating provisions possible in order to maintain them and provide compensation by means of subsidies. The only result of Community legislation in this field therefore is the introduction of new terminology; what was formerly the cancellation of a deficit now goes under the guise of subsidy, or the standardization of accounts, or the repayment of public charges. In the interests of simplification some Member States have declared their entire railway systems to be public services and have thus transformed their deficits into a public service matter.

35. It is obvious that Community legislation on the revitalization of the railways will yield no practical results until it becomes a genuine and effective instrument for coordinating modes of transport and improving transport markets within the framework of an overall common transport policy.

Social harmonization

36. Social harmonization is a good example of how to stagger along ineffectually with a mere policy of small steps and fail to persuade those concerned to support legislation. In the outline decision of 1965 the Council of Ministers undertook to harmonize several specific aspects of social legislation in the transport sector, such as driving and rest periods etc.. It was only in 1969, however, that the first practical measures were taken, and even then it was not because the Council of Ministers suddenly had the foresight to aim at a distant goal, but because public opinion, shocked by two horrifying road transport disasters, demanded that something be done. In Martelange in the Ardennes a tanker carrying a dangerous load and piloted by

an exhausted driver left the road in the middle of the village and exploded; twelve people were killed and half the village was destroyed. In another accident a bus drove over a motorway bridge near Limburg at 3 a.m., after the driver had been almost 20 hours at the wheel. In this accident over 30 schoolchildren and teachers lost their lives returning to Belgium from a winter sports holiday.

All the arguments currently advanced against a further extension of Community social legislation on transport, against tachographs etc., were continually being put forward even at that time. Will it take the Los Alfaques disaster to silence these critical voices, prompted only by self-interest, and to enable the Community to take a new and major step forward in this area? Since 1969 the Community has had to adopt about 20 further legal acts, partly to uphold social regulations on transport and partly to counteract them. The Council and Commission have crossed swords in the Court of Justice.

37. Will further horrifying disasters have to strike before there is an end, particularly in the United Kingdom and Ireland, to the opposition to social provisions on road transport?

38. Indeed, apart from provisions on driving periods and tachographs, the Commission has so far adopted only a few rules on minimum standards in the training of drivers. Proposals for social provisions in the field of inland waterway transport have been before the Council since 1975 and the Commission does not even dare to consider any further extension of social provisions in road transport or corresponding rules for the railways, let alone for sea transport.

39. This is all due to the fact that those concerned are being asked to make sacrifices without any explanation of the long-term objectives of Community policy and the resulting advantages to those who in the beginning might not be particularly anxious to change their customary ways of doing things.

Infrastructure policy

40. In 1960 the Commission submitted a recommendation on the expansion of the Community's transport infrastructure, but this made absolutely no provision for intervention on the part of the Community and confined itself to a megalomaniac plan for long-distance highway linkups along the lines envisaged by the Council of Europe and thus remained a mere pipedream. In 1966 the consultation procedure mentioned above was introduced, but this again made no provision for intervention by the Commission and also had the disadvantage that Member States only notified the Commission of their projects when there was no longer any possibility of changing them. In 1978 the procedure was improved. A standing committee on transport infrastructures was set up, and the Commission was given the opportunity of putting forward proposals for the financing of projects of

importance to the Community. Since, however, no appropriations were entered in the budget for these measures, it seems likely that nothing will come of the Commission proposals in the budgetary negotiations. A Commission proposal designed to improve this financing procedure has been before the Council since 1976. (Cf. the Nyborg report, Doc. 185/77, and point 16 of the accompanying opinion of the Committee on Budgets, which warns against an ambitious undertaking that might well be doomed to early failure through lack of funds. The budget nevertheless now shows a token entry against this item.)

41. Infrastructure policy, like transport policy as a whole, suffers from the fact that it has not yet been possible to define the Community's objectives in this area and to have them confirmed by the Council. In reports by Mr Müller-Hermann (Doc. 90/60), Mr Seifriz (Doc. 7/65) and others, the European Parliament has repeatedly pointed out that the Community's aim in the matter of infrastructure policy should be not so much to concentrate on the major through-routes as to close the gaps that exist at Community frontiers, both major (Alpine crossings, permanent links across sea straits) and minor (regional and local links at frontiers). This question has never been thrashed out in depth. The Commission's position in consultation meetings is accordingly a weak one. In making its recommendations to the Member States it is forced to fall back on the presumed tacit agreement and on its own ideas, which have never been clearly defined or recognized by Parliament and the Council. Furthermore, these ideas change as the Commission officials responsible come and go, because even within the Commission itself these questions have never been fully clarified, and there does not even seem to be any recognized line of thinking amongst the commissioners themselves on this matter.

Charging for the use of transport infrastructures

42. This is probably the most important aspect of any transport policy in our century, in which rail, road and inland waterways are the main competitors in the transport sector. Unless this problem is solved there can be no sound transport policy.

43. The Community adopted the proper approach by initiating a discussion on this matter, instituting an expert survey and keeping a statistical record of infrastructure costs on a common basis, which has given rise to an entire infrastructure accounting system. The survey has been in progress since 1964 and the accounting system has been operative since 1970. In addition, eight legal acts have been adopted by the Community, but in practice no real progress has been made.

44. The Commission proposals on charging for the use of transport infrastructures have been before the Council since 1971. In Mr Kollwelter's report (Doc. 195/73) Parliament delivered a favourable opinion on this matter, but the Council maintains its silence. One consequence of these proposals would be a harmonization of special transport taxes. However, as mentioned above, the Council has not even been able to harmonize the basis of assessment for motor vehicle taxes.

45. It has to be admitted that the formulation and implementation of a system of charging for the use of transport infrastructures is an enormous intellectual undertaking. It can succeed only if we begin with a clear understanding of the part played by transport in society as a whole, the special economic and technical characteristics of the various modes of transport, the possibilities with regard to competition and control in an economic sector of this kind, taxation and tax-shifting theories, and investment planning for a full decade in advance, etc.. The intellectual capacity of the Council of Ministers is simply not adequate to cope with this task. No one who thinks in terms of small steps and tactical moves can visualize a system of charging for the use of transport infrastructures as the cornerstone of any transport policy. Small steps will achieve nothing; a bold approach is the only answer.

46. The Commission has provided the necessary broad ideas. It is not essential for everything to be perfectly worked out down to the last detail. It is not even necessary to aim at being 100% fair to all concerned, but it is essential to set a process in motion which as time goes on will, by trial and error, permit progress towards greater fairness in sharing the burdens and ensure that the present state of affairs does not continue indefinitely.

Prices policy

47. In the area of prices policy the Community's only achievement, after a full 20 years, is the introduction of two experimental systems of pricing for cross-border transport, which now exist side by side, viz. obligatory bracket tariffs between the old Member States and reference tariffs between the old and the new Member States as well as between the individual new Member States.

This failure is not surprising since prices are clearly based on costs and are closely connected with the market situation. As long as costs in the transport sector are distorted by a lack of harmonization, i.e. by excessive divergences in the Member States' fiscal and social legislation technical provisions etc., there can be no hope of coming to grips with a prices policy, even for international transport. The market conditions that determine prices, for their part, cannot be controlled without a common capacity policy. Furthermore, international and national price systems are so closely inter-related that there can be no hope of maintaining throughout the Community price conditions similar to those on an internal market unless capacity policies are harmonized.

48. The proposals on the fixing of prices for transport by road, inland waterway and rail within the Member States have long since been withdrawn by the Commission. Only mild proposals for transfrontier rail and inland waterway prices are now before the Council.

49. Apart from the ECSC's initial successes with through tariffs for coal and steel products and with the elimination of discrimination and support tariffs European cooperation has so far made no significant progress in this field.

50. Regrettably, in the 20 years since the EEC was founded no Community regulations have been adopted on transport rates, the important basic structural element in any economy, and in this sphere the Community is scarcely any closer to creating conditions similar to those on an internal market than it was in the beginning.

51. The most important reason for this failure is that the connection between prices policy on the one hand and harmonization policy and capacity policy on the other has never been understood and the effort has never been made to adapt the rules of the Convention of Mannheim within the framework of a European inland waterways policy in such a way that a common prices policy could be achieved in the European Community. Without inland waterway tariffs there can be no railway tariffs, and without railway tariffs there can be no road tariffs etc.

Capacity policy

52. In this connection it must be remembered that the most important decisions with regard to the supply capacity of any mode of transport are taken alongside decisions on infrastructural expansion. (Whether to build more motorways or not is the most important question affecting the capacity of road transport, the question of canal expansion affects inland waterway transport, and the closure of lines is at present the most important issue affecting the supply capacity of the railways. The size of traffic routes is crucial to carrying capacity etc.)

Aside from these decisions on infrastructure, the Community is also faced with the following problems as regards admission to the market and capacity policy:

- The 'subjective criteria' for admission to the market (creditworthiness, professional competence etc.) must to some extent be harmonized in all the Member States.
- The 'objective criteria' (size and number of registered vehicles) must be regulated on the basis of roughly similar principles in all Member States and in the context of an ongoing transport policy, and an effort must be

made to work out a common capacity policy combining a short-term economic policy and a long-term growth policy, because if the Member States set themselves very different objectives there will be no way of preventing distortions of competition not only between transport undertakings, but also between user undertakings in the Member States.

- In international transport a common policy is a prerequisite for the establishment of a common transport market which will be as liberal as possible. Since international transport cannot be more liberal than domestic transport, a continuous common policy must be implemented which each year will regulate capacity in international transport. By streamlining and simplifying registration procedures, international transport must be freed as far as possible from bureaucratic obstructions, which would make it excessively expensive by comparison with internal transport.

53. What has the Community achieved so far by way of a common policy in this area?

The 'first' Council directive of 23 July 1962 liberalized certain categories of cross-border transport and goods transport by road to and from border areas, but it was never followed up by a second. It was, however, revised four times, the scope of the liberalization measures becoming wider each time. This directive is a means of affording much relief to the transport systems concerned, but its significance in relation to international transport is rather small.

54. Since 1968 the normal long-distance transport of goods across Community borders has been governed by the 'Community quota', which exists side by side with bilateral agreements. As the Commission sees it, the Community quota should gradually take the place of the bilateral quotas, but this has not as yet happened. Most of the cross-border transport between Community Member States is still governed by bilateral arrangements. Even today there is absolutely no question of permitting carriers to operate transport services in another Member State, even though this is provided for by the EEC Treaty (Article 75 (1) (b)). The Commission has assumed a minor role in regard to the granting of bilateral authorizations.

55. In a 1965 regulation the Community adopted certain rules on the forms used for granting bilateral authorizations in road transport. Since 1974 there have been rules governing admission to the profession and since 1977 the mutual recognition of certain diplomas and other certificates of qualification in road transport, as well as certain provisions favouring combined road and rail transport (piggyback transport).

56. However, the Commission's main proposals with regard to a common capacity policy for road transport have been withdrawn. The only proposals still before the Council are those for international road transport, negotiations with third countries and the Community's accession to the agreement on the TIR carnet customs procedure. The latter has resulted in a great improvement in the smooth flow of international road transport but the credit for this must go to the ECE in Geneva and the International Road Transport Union (IRU). (For intra-Community transport there does, however, exist the 'common transit procedure', which has resulted in even more far-reaching improvements than the TIR carnet.)

57. The Council has not even adopted finally, but only for a three-year period, the Commission's proposal for a market surveillance system, which could pave the way for future agreement on a capacity policy.

The market surveillance system would benefit all modes of transport.

58. The Community's efforts in the area of inland waterway transport have been a complete disaster. The only measures so far consist of a Council resolution of 27.6.1970 on entry to the market and a 1968 Commission recommendation on the structural improvement of inland waterway transport, both of which are of little importance. Notwithstanding the urgent need for a capacity policy in inland waterway transport, years of study, discussion and negotiation have succeeded only in producing a laying-up programme which, when it was finally agreed by all concerned, was declared by the Court of Justice of the European Communities to be unacceptable because important institutional and legal details in the programme are at variance with the Treaties.

Certain parties, who should be taken seriously, claim that laying-up arrangements for superfluous shipping capacity can operate satisfactorily only within the framework of a capacity policy for inland waterway transport, and that any regulation of this kind is doomed to failure if it is implemented in isolation. Voluntary temporary laying-up can counteract incidental short-term market fluctuations, but cannot overcome the present structural capacity surplus. However, the current structure of inland waterway transport will in the long term inevitably call for a registration policy. Up to now the Mannheim Convention has been the main stumbling block, and there is no way of changing this situation until the Community is in a position to put forward its own clearly-defined transport policy as a basis for negotiations with Switzerland. The solution of these problems is becoming increasingly urgent since, when the Rhine-Main-Danube canal is completed, all the states of southeast Europe and the Soviet Union will be taking their places alongside Switzerland at the negotiating table.

59. Until a system is developed for regulating capacity in inland waterway and road transport, pricing in these two branches of the transport sector will remain chaotic, with enormous resulting damage to the railways. User undertakings will also clearly suffer in the long term if not in the short term.

60. In the field of road passenger transport the Community has adopted a number of measures which facilitate and speed up authorization procedures for international transport and which have led to the recognition of diplomas and qualifications and to the harmonization of certain other rules on the admission of passenger transport operators to the profession; it has liberalized much cross-frontier transport and, to this end, is currently negotiating with several third countries. Even in this field, however, there does not exist a comprehensive capacity policy.

Technical harmonization

61. The Community has adopted a number of useful provisions for the harmonization of legislation on tankers in inland waterway transport, the mutual recognition of shipping certificates and technical control of motor vehicles. Above all, it has almost completely harmonized technical standards for motor vehicles and agricultural tractors, so much so that on the basis of these standards an EEC car and an EEC tractor could now be built. This, however, is more relevant to industry and the car trade than transport policy. The most important, perhaps the only important measure, however, is still pending. This relates to the maximum permissible dimensions and weights of lorries. Since 1962 a Commission proposal on this matter has been before the Council of Ministers, but in all these years the Council has not yet managed to adopt this vitally important decision. Until a decision that will prove its worth in the long term has been taken on this question, there can be no possibility of drawing up a common transport policy, since only when the maximum permissible dimensions and weights for vehicles have been determined can there be any hope of pushing through a meaningful regulation on charging for the use of infra-structures and only on the basis of these fundamental data can there be any attempt to harmonize vehicle and oil taxes. Indeed, a long-term road-building programme can hardly be started without a prior decision on dimensions and weights. There is no point in beating about the bush - without this basic decision there can be no coordination of rail and road transport and consequently no transport policy. Even if it has been decided to pursue a policy of small steps, it must be realized that this is the one step that must be taken before all others.

Shipping and ports

62. For years now the Community has been discussing matters related to a common policy for shipping and ports. Parliament proposed that a common policy on ports be drawn up, but there was a reluctance to adopt this proposal on the alleged grounds that the ports formed part of the sea transport

sector (they are, however, the final destinations of all other modes of transport) and are thus excluded by Article 84 from the field of action of the European Communities. There was a general unwillingness to admit that the lack of a Community policy on ports was obstructing the harmonization of many aspects of transport policy which influenced competition between ports. It is true that, since 1974, the Commission has at a number of conferences and committee meetings made contact with the ports industry thereby improving its knowledge of the subject, but no specific steps have yet been taken.

In 1977, under pressure of world events (the UNCTAD Code, competition from the COMECON countries), the Community took a decision on a consultation procedure for sea transport, but only in the matter of relations with third countries and cooperation within international organizations. However, how can we hope for international credibility, if our Community policies on inland waterway transport and world shipping are not aligned, in the sense that we continue to refuse to include ports and intra-Community sea transport in the Council's field of action?

Air transport

63. Proposals by the Commission and Parliament have so far produced nothing specific. At its June 1978 meeting the Council did, however, adopt a programme of priorities for air transport; it had previously set up a special committee on the subject under the Permanent Representatives' transport working party.

Statistics

64. The Community has drawn up a standard transport nomenclature for statistical purposes, which is very useful but more relevant to trade policy than transport policy. Since 1969 the Community has been endeavouring to establish regional statistics on road transport, and while this also is very useful, it is more relevant to regional policy.

What is really needed for a transport policy is a market surveillance system backed up by sound statistical methods, and, as we have indicated above, this does not yet exist.

Summary

65. There is no adequate legal basis in the Treaty for a common transport policy.

No agreement has yet been reached on the basic principles of transport policy. Consultation procedures are carried out only with reluctance. Competition rules achieve nothing more than a rather haphazard check on abuses, while there has been no harmonization of those taxes that are peculiar to the transport sector (motor vehicle taxation and taxes on oil).

The harmonization of State intervention has not eliminated costs to the railways that are detrimental to their proper operation; nor has it eliminated deficits, which instead have simply been generally reclassified in the context of the standardization of accounts.

Some social legislation has been enacted on road transport as a result of serious accidents, but this is still in dispute and for some years past the tendency has been towards the reduction rather than expansion of such legislation.

There are no arrangements for joint planning on transport infrastructures, apart from a consultation procedure which was not satisfactory in its original form and which has not yet proved its worth in its new form.

No system for charging for the use of transport infrastructures has been introduced.

There is no common prices policy, apart from the ECSC's initial successes (through tariffs and abolition of special and support tariffs), the abolition of discriminations in railway tariffs and an experimental two-tier system for international road transport.

There is no capacity policy, apart from the minimum Community quota for international road freight transport. There are no prospects as yet of a liberal common transport market operating in conditions similar to those on internal markets, the only liberalization achieved taking the form of transport arrangements in border areas and for some special categories of transport.

The most important decision in the matter of technical harmonization, i.e. that on the maximum permissible dimensions and weights of lorries, is still in abeyance.

The only shipping and ports policy measure of any substance is the introduction of a consultation system for world shipping questions, which has yet to prove its worth. It may be pointed out in advance, however, that, since the Community has no internal policy with regard to shipping and ports, this consultation system can scarcely have any great influence because of its lack of credibility. The Community has in addition begun work on safety at sea (with particular reference to tankers) and measures to counter unfair competition from the Eastern-bloc countries.

In the air transport sector the Community has so far not even been able to help the European aeronautical industry.

To sum up, there is at present no coherent common transport policy.

2. The Council's failure to take decisions and the 'small steps' policy

66. The Commission did not adopt the 'small steps' policy of its own accord, but rather was forced into it by the Council's failure to take decisions.

The Council for its part has never instructed the Commission to adopt this 'small steps' policy, nor has it ever expressly stated that this was the kind of policy it wanted to adopt itself. The fact is that the Council has never had a policy of any kind, but has simply shilly-shallied from one file to another. In many cases it has not even rejected the Commission's proposals or given any reasons for its rejection, but has simply taken no decision at all and postponed the Commission proposals unchanged from one meeting to another.

67. On at least two occasions the Commission tried to sketch the broad outlines of a common European transport policy. In 1961 it submitted a memorandum and in 1973 a communication to the Council. On both occasions its idea for the development of an overall plan was wholeheartedly supported by the European Parliament, although on both occasions Parliament criticized the Commission proposals for the basic outline of a transport policy as inadequate and called upon the Commission to spell them out in more detail. On neither occasion did the Commission act on this suggestion. It refused or simply neglected to rewrite its 1961 memorandum and its 1973 communication in the light of the observations made by the European Parliament. It got no assistance whatever from the Council in drawing up its memorandum or its communication. On both occasions the Council demanded that practical proposals for regulations be put before it in such a final form that it would only have to adopt them. In 1962 therefore the Commission submitted an action programme which, however, was never adopted by the Council. The 1973 communication contained a work programme for the period 1974-1976, which was supplemented by the Commission in 1977 with a work programme for 1978-1980 setting out a list of priorities. Again these proposals were only noted by the Council and not adopted.

68. The Commission should not have released the Council from its responsibilities. After the memorandum and the communication it should have presented the Council with another draft of its ideas on the whole subject, rewritten in the light of Parliament's opinion and submitted as a practical proposal for a Resolution, and it should then have fought for its adoption.

69. This is what has happened with all those Community policies that have worked. One has only to look, for example, at the agricultural policy.

70. The one and only time that the Council agreed on a major step forward in the field of transport policy was when it adopted the harmonization decision of 1965. Could we not now proceed again in the same way? One thing is certain, namely that those who now want to make a virtue of necessity and acclaim the 'small steps' policy cannot argue that the experiences of the last twenty years are in their favour. Twenty years after the EEC Treaty was signed there is still no common transport policy. The policy of small steps has led absolutely nowhere. Even the few successes that have been achieved are jeopardized; there is always the threat of a large step backwards. It is only with great difficulty that a breakdown of Community rules on the

Community quota, tariffs in cross-border road transport, social provisions on road transport, the tachograph etc. is averted from year to year. It is, in fact, impossible to convince the parties involved of the value of many of these provisions, unless they can be represented as part of an overall scheme which will one day benefit all concerned in the form of a liberal European common transport market.

3. The significance of the 1973 Commission communication and the priority working programme for 1978-1980 - the need for the Council of Ministers to adopt a basic plan

71. On several occasions the Commission has indicated its approach to the question of working out a common transport policy. It still regards the communication to the Council on the development of a common transport policy (Doc. 226/73) as the star by which it steers in all its work and as the expression of its basic idea of a transport policy. While the Council discussed this communication only in a perfunctory manner and never expressed its agreement with it, it did not, on the other hand, reject it entirely. The Commission seems to deduce from this that there is a 'tacit agreement' with regard to a common transport policy.

72. Unfortunately, however, this is wishful thinking. And even if such a tacit agreement did exist, this could not be taken as the basis for a common policy. After all, it is a question of winning the confidence of those directly concerned, who will have to implement the new common rules and be prepared to make sacrifices in order to do so.

73. There is also the question of the Community's credibility not only in the eyes of its own citizens but also in the eyes of third countries. Nobody can deny that at present the Community has no credibility in the area of transport policy.

74. Even if the Commission, after several fruitless attempts to persuade the Council to discuss basic principles, took the view that at present more can be achieved in the Council through 'tacit agreement' than through such a discussion, would it not have been to its advantage at least to call upon the declared support of the European Parliament? The Commission could have relied upon this support if it had amended its communication on the basis of Parliament's ideas as set out in Mr Mursch's report (Doc. 215/74) and submitted a proposal for a resolution or at least, as in 1961, a memorandum on the basis of its communication.

75. In November 1977 the Commission submitted a further communication to the Council entitled 'Priority business for a Council Working Programme to 1980'.

The Council has not adopted the programme. This programme suffers from the same disadvantage as the 1962 action programme. It consists of a series of deadlines for 'small steps', the connection between which and the importance of which within the framework of an overall plan is not immediately clear, despite the reference in the preamble to the 1973 communication and the Mursch report.

76. Thus the Commission programme once again deals with fringe matters, such as summer time and the European driving licence, side by side with basic problems, such as the revision of the Mannheim Convention and the working out of a system of charging for the use of transport infrastructures. It is also clear from the programme that the Community is at the mercy of outside events, such as the UNCTAD Code, competition from the Eastern bloc countries, summer time and other issues to which it is reacting on an ad hoc basis instead of itself seizing the initiative in these policy areas.

77. Will this programme be replaced next year by a new three-year programme for 1981-83, or in view of the fact that nothing has been implemented, will it be the same programme?

On 1 January 1978¹ the Council still had 18 Commission proposals before it that had not yet been dealt with, after a large number had been withdrawn because they were out of date. Ten new proposals have in the meantime been submitted (up to October 1978).

78. Will the Commission shortly adopt a new approach in order to take a major step forward in the matter of transport policy?

79. Your rapporteur is very well aware that it is quite possible that amongst the advocates of the 'small steps' policy there are those who would prefer to take no steps whatsoever, and who think that if measures have to be taken, then these should be as unambitious as possible. This, however, must be the approach of only a small minority, which does not have the courage openly to proclaim its motivation, which is to slow down if not completely stop, the Community's progress towards economic and monetary union.

80. There should be no bending over backwards to achieve compromises or water down policy and reduce measures to such an extent that those who want to do nothing whatsoever will be persuaded to agree. It would be preferable to adopt a clear and uncompromising approach and then to proceed to seek agreement on the understanding that if this agreement is not achieved and no action is taken, the responsibility for this will be laid at the door of those to whom it belongs.

¹ 'List of Commission proposals on which the European Parliament has delivered an opinion, now pending before the Council', Commission of the European Communities, Doc. SEC (78) 91 final, Brussels, 12.1.1978.

4. Outline of the regulations still required to achieve the desired degree of integration

81. The desired degree of integration may be described as the stage at which conditions in the Community's transport sector are similar to those obtaining in the internal market. Trade in transport services must take place within a common transport system, which will provide just as much freedom in international transport as exists in the domestic transport systems of the Member States. The legal provisions governing transport in the Member States must be so harmonized that there will neither be any distortion of competition between transport undertakings in cross-border transport nor such differences in the domestic transport situation that the economies of the various Member States have to cope with differences in transport costs of such a nature as to distort competition.

82. The following is a list of what should be done:

In the area of harmonization: further progress on social provisions for road transport; social provisions for inland waterway, rail and sea transport. Harmonization of the taxes peculiar to the transport sector, i.e. motor vehicle taxation and taxes on oil, and the coordination of such harmonization with a system of payment for the use of transport infrastructures. Harmonization of the most important technical provisions in road transport, particularly of the maximum permissible dimensions and weights for goods transport vehicles. A common railway policy (in regard to the abolition of public liabilities, putting the railways on a sound financial footing, etc.). A common market surveillance system as a precondition for a common prices and capacity policy. In the area of prices policy: a common procedure for fixing prices in international and domestic transport for all modes of transport. In the area of capacity policy: a common long-term programme for financing the building of transport infrastructures or the closure of railway lines, a common procedure to regulate capacity in road and inland waterway transport, a revision of the Mannheim Convention to provide for adjustment to the system of transport infrastructure costs, worked out by the Community, fiscal harmonization, prices policy and capacity policy; coordination of all transport policy measures with the interests of ports and the objectives of a common ports policy; the establishment of a common market in sea transport (particularly the abolition of restrictions on cabotage on the domestic market and a common international shipping policy vis-à-vis the outside world); the establishment of a common airspace (i.e. in particular the joint administration of landing rights).

83. The Community has every reason to hope that a common transport policy drawn up along these lines would point the way to future measures on transport safety, environmental protection, regional development, energy policy and other major issues.

84. In view of the twenty years spent in fruitless discussion and the continual disappointments that have been experienced, many may feel that it is asking too much to call for the above changes in the national transport policies of the Member States, which have hitherto always been quite independent. However, no one of the Member States is particularly happy with its own present transport policy systems. Caution would be justified if it were a question of abolishing transport systems in the Member States that were functioning perfectly and replacing them by an as yet untried plan for a new Community policy, but this is not the case. The chief opposition to the idea of a common transport policy comes from those who have gained unjustifiable advantages from the Member States' transport policies, which are in parts absurd and illogical, and who feel that they have to defend these advantages against the proposal to draw up a modern transport policy for the Community. What was true in 1958 is still true today - a European Community policy would give us an opportunity of replacing the out-dated transport systems of all our Member States by a modern system for the remainder of this century and the next, a transport system which Europe urgently needs if it is to stand up to competition and remain free and independent in a changed world.

SECTION II

A common transport policy as an essential element in securing the Community's position and achieving economic and monetary union

85. As we have already pointed out, this report is intended not so much to define the objectives of a common transport policy as to deal with the question of how such a policy might be implemented. The objectives have been adequately set out and explained in Parliament's earlier reports (most recently by Mr Mursch in 1974) and in the various Commission documents. In this chapter, however, a further attempt will be made to sum up briefly the arguments for the introduction of a coherent common transport policy. This is done in the hope of convincing those who feel that out of an inexplicable urge for harmonization the Community is trying to interfere in a petty way in the Member States' transport policies.

1. A liberal common transport market as a necessary consequence of the Economic Community and of the efforts to achieve economic and monetary union

86. Modern industrialized countries require a smoothly functioning transport system, since all prosperity is based on the division of labour, which always makes transport services necessary. Through the Common Market the peoples of Europe are seeking to rationalize their economies and to achieve better and cheaper supplies through more extensive trading. Just as customs duties are being abolished in order to achieve this purpose, the physical barriers to transport must also be removed. The more customs duties and other obstacles to trade are abolished, the more apparent become the transport difficulties formerly hidden by these barriers. Even after all customs duties and other obstacles to commerce have been eliminated, trade is often still difficult, because transport authorizations are not granted or because there is no road or rail link between two places on either side of a Community border.

87. Mr Mursch's report pointed out that transport difficulties are often worse than customs duties, because no matter how high a customs duty may be, it cannot hold up the flow of goods, provided the duty can be paid. However, when a particular form of transport is not authorized, trade is impossible no matter how high the price gap may be.

88. The authors of the EEC Treaty were quite right therefore to regard a transport policy as an absolutely essential adjunct to the trade policy of a customs union. A free market in goods is pointless, unless it is backed up by a free market in transport services. The present backward state of Community transport policy might even jeopardize the degree of integration

that has so far been achieved. No further progress towards economic and monetary union will be possible if, as is the case at present, the Member States simply defend their own interests against each other in transport matters.

89. It should also be borne in mind that cross-border transport is not the only issue involved. Regulations governing transport within the Member States must also be harmonized, because transport costs are such an important factor in cost structures and general regional policy within the Member States that there can be no free and fair competition between the undertakings of these countries while their legislations are completely different.

2. Restoration of confidence in Community policy in the transport sector

90. After twenty years of a 'small steps' policy and of continual disputes about peripheral matters, the public's confidence in the achievement of a common transport policy has been severely shaken, if not altogether shattered. The result is that when any new proposals are made, the people concerned ask: why are they doing this to me? The railways have had to change their prices, while nothing was done in the case of road and inland waterway transport. Road transport was forced to accept social harmonization, but the railways and the inland waterways did not follow suit. Social harmonization for road transport was pushed through on grounds of safety, though in fact this is not justified at all under the Treaty. The tax adjustments that were equally important for the purpose of harmonizing costs were not made.

How are we to explain a policy of this kind to the economic circles concerned, to the drivers and to the public as a whole?

91. Furthermore, it is not only to the peoples of the Member States that this policy must be explained, so that they can indicate their approval of it in the normal democratic opinion-forming and decision-making process. The Community's credibility vis-à-vis the outside world is also at stake. How can we stand up to the representatives of third countries in negotiations on trade and transport, if we can point to no progress of any kind on these matters within the Community?

to new terminological difficulties, as it is his express purpose to find a way around the difficulties and misunderstandings that have arisen from the arguments for and against an 'overall plan' or 'small steps'. He merely wishes to replace these ambiguous concepts by a clear definition of objectives, the point of departure, the interrelation between the parts of the whole, the links between various elements and the way in which the various processes can be broken down into smaller segments.

118. With this approach the word 'priority' also acquires a new and more practical meaning. In all Community documents to date 'priority' has in practice meant no more than that it is felt that in view of current problems a certain regulation should be adopted as speedily as possible. What connection this regulation might have with other regulations has generally been ignored. It often seems that the Commission's so-called 'pragmatic priorities' are determined not so much by the problems that need to be solved as by what it feels it can 'get away with' with the Council. This is no longer a policy of small steps but a policy of least resistance.

119. It is obvious, of course, that not all elements of transport policy are equally closely connected with the others. Thus several elements of a new European transport system can be singled out for priority ranking, but yet are not absolutely essential for progress on other measures within the system. Questions of transport safety, for example, come under this heading. These are a matter of the very highest priority, and yet if measures in regard to transport safety do not exist, this does not mean that other measures will be held up. Another priority which can stand in isolation from all the others is the question of the European Community driving licence, yet another the establishment of a procedure for fixing summer time jointly, etc.

120. These isolated priorities offer a wide political margin for manoeuvre. The same cannot be said of those elements of transport policy that are more closely woven into the fabric of the system, and this is even more the case with regard to those elements which occupy a key position in the system. Unless a solution can be found for the problems posed by these elements of the transport policy they might hold up progress all along the line. All the efforts of the Commission, the Council and European political life in general must therefore be concentrated on them.

113. On the other hand, the interrelationship between the various elements of transport policy should be discussed. This will determine the extent of the measures that can be taken. The important factor in this discussion should be not the personal optimism or pessimism of those taking part or any emotional preference for pragmatism or systematic arrangement, but accurate knowledge of the various elements of transport policy and the way in which they are interrelated. This knowledge can be extended by means of systems analysis. When the elements of a system, such as that of transport policy, and the way in which they are interrelated have been accurately determined, it is then possible to proceed from the existing situation and, with a view to the attainment of a given objective, draw up a network plan of the various interrelated elements, from which it will be clear what steps must be taken and in what order, as well as how large these steps can or must be.

114. In this report your committee does not intend to carry out such a systems analysis, nor does it intend to present any complete network plan as a guide to the strategy to be followed in implementing Community policy. It considers this to be a job for the Commission.

115. The Commission should publish a new edition of its 1973 Communication and its 1977 Working Programme, in which it should outline its objectives on the basis of the views set out in the various Community documents referred to above (the memorandum, the Kapteyn reports, the Communication, etc.) and on which there is supposedly tacit agreement. Taking the present situation as its point of departure, it should then show how these objectives are to be reached.

116. This new Commission document should not take the form once again of a memorandum, much less a communication, but rather of a proposal for a Council resolution such as the 1977 priority work programme, or better still a decision along the lines of the 1965 outline decision. In particular such an approach would have the effect of ensuring that this time the European Parliament's proposed amendments would be put in a more practical form and would thus possibly command more attention.

2. Pragmatic priorities or systems analysis?

117. Systems analysis and network planning are methods or aids to thinking and planning developed by the science of business management, but also applicable to the political planning process. Your rapporteur realizes that they are only a way of expressing ideas, which can certainly be expressed in other ways also. Neither does he want to get too deeply embroiled in the language of systems analysis and network planning, thus possibly giving rise

The Commission may be prepared to accept the idea of 'tacit agreement' on such an important matter, but this is something that will never satisfy Parliament.

109. Your committee would also like to stress that while an overall plan is called for, this does not mean that once it has been finalized, the implementation cannot be in the form of small steps.

110. However, it would point out that the question of how small the steps to be taken in the area of transport policy should be is not something to be determined by taste, preconceived ideas or mere tactics, but an objective question. There are many component elements of transport policy that can be put into effect only en bloc or together, and not in small steps.

111. Your committee would dismiss as unworkable any policy of dealing on a Community basis only with such problems as could be broken down into sufficiently small elements and simply rejecting, as unsuitable for being dealt with on a Community basis, such problems as could only be solved by larger steps or several steps simultaneously.

112. Your committee would propose therefore that the discussion on an 'overall plan' as opposed to 'small steps' should be discontinued. On the one hand, there should be a discussion of the objectives of a common transport policy, by means of which those who want no common transport policy whatsoever, and thus no common market and no economic union, who do not see a Europe strong and vigorous, because united, as the goal of all our work, will be forced to nail their colours to the mast. This is true of the European Parliament, in which all the members should be prepared to stand by their views and take responsibility for their actions and in which we should be prepared to go ahead calmly with a vote on this matter, however much this might be opposed, but it is also true of the Commission, where the Commissioners must make it quite clear how they intend to discharge their mandate and acquit themselves of the responsibilities imposed on them by Articles 3(e) and 74-84 of the EEC Treaty. It is equally true for the Council of Ministers, which must also make it clear once and for all whether it regards itself as the defender of the traditional rights of national interest groups or as the powerhouse in the building of a new and vigorous Europe, whether it acknowledges the responsibility devolving on it by virtue of the European Treaties or whether it feels that it must protect its citizens from an excess of Europe.

transport policy that is geared to the eminently foreseeable needs of a common market and moreover of an economic and monetary union, in short a modern transport system for half a continent for the next 100 years. An overall plan is not just a collection of fine words intended to inspire courage, but the instrument of a policy with clear objectives; without it such a policy can enjoy no credibility and there can be no confidence in the institutions.

105. The policy is being talked to death, and the arguments advanced are often coloured by preconceived ideas, such as British pragmatism and the Continental passion for reducing everything to a system. Many proverbs and pieces of folklore are tossed around freely in the debate, but the trouble with proverbs, unfortunately, is that no matter what a proverb says, you can always find one to say the opposite. One side will say, 'He who loves the danger shall perish therein', but the other side will optimistically counter, 'A good start is half the battle'!

106. Of course, the fact is that all the discussion over the past few years has led to an excessive polarization of attitudes. In reality the positions taken up by the Commission and Parliament on the question of strategy are not as far apart as they often seem to be. The advocates of a small steps policy do have their own overall plan. If this overall plan incorporates a genuine European common transport policy, the only question that remains is the tactical one of whether the public ought to be acquainted with this plan, with a view to restoring its confidence, before the small steps are taken.

Those who advocate an overall plan do not pursue an all-or-nothing policy either. When the overall plan has been drawn up and the direction to be taken clearly pointed out, they are naturally prepared to break up its practical implementation into as many small steps as are possible and called for by the nature of the case.

107. Your committee would like to make it clear that it rejects the ideas of those who would be in favour of a small steps policy, because they take the minimalistic view of a common European transport policy as simply a means of patching up the Member States' existing transport systems and do not aim at the goal of a genuine common transport policy.

108. It would also like to make it clear that even a small steps policy requires that objectives be clearly defined. This leaves room for discussion as to how much agreement there should be about these objectives and to what extent and in what legal form the Council of Ministers should set them out.

104. The advocates of an overall plan have hitherto had a large majority in the European Parliament. For some years now, however, the Commission has been turning a deaf ear to them, and even in some quarters in Parliament they are encountering opposition that they never had to contend with before. They feel that a small steps policy is unrealistic, because the past twenty years have shown that it gets nowhere. They argue that if the Community is not strong enough to take the necessary major steps, then it is better to wait and build up that strength than to take steps, however small, in the wrong direction. It may be true that one should not take on too much at the one time, but economic and transport policy, especially the latter, simply cannot be approached on a piecemeal basis. A big push is called for. Even in a small steps policy mistakes cannot be avoided, since unless we know which step to take first we might just as easily trip up. Thus even for a small steps policy we need an overall plan. The Commission's answer to this (and it is backed up by the other advocates of a small steps policy) is that of course it has an overall plan and does know where it is heading, but unlike others it is not spinning webs of fine words rather than forging ahead. The defenders of the overall plan reply in turn that this is dishonest and not calculated to inspire confidence, and above all that there is no reason why the various interests concerned should not have several such 'tacitly understood overall plans', which would ultimately result in confusion. In particular, 'tacitly understood overall plans' cannot be subjected to parliamentary control. It is conceded that a small steps policy may be pragmatic, but while pragmatism is all very well in daily life and in coping with various problems, it is not the answer when a radical reform is called for. The Community's task is not to manage the existing transport system and take pragmatic action on any problems that may arise, but to carry through a radical reform, by means of which the nine transport systems of the Member States and several international transport systems, which differ from them but are nevertheless interconnected, would be fused into a new modern system as a result of structural changes. The small steps policy is therefore no more than a minimum policy implying that the efforts to achieve a true European common transport policy has been abandoned. It is not a question of trying to prepare for unforeseeable events, but of drawing up a

in this matter so that it was not able to oblige the other institutions to adopt its line of thinking. Neither, unfortunately, could it convince them of the soundness and correctness of its ideas.

Around the end of the '50s and the beginning of the '60s the public would have been prepared to accept the idea of a common transport policy, even to the extent of giving up its accustomed way of doing things and striking out on new paths; it would even have been prepared to make sacrifices affecting its own established interests. However, the more the Community turned out to be a failure, and this not only in the transport sector, the more this willingness to make sacrifices crumbled away. The result was that towards the end of the '60s the day had been won by those who had unjustifiably acquired special privileges by virtue of the present outdated transport system and felt that they could defend these privileges by persuading the public that the present situation was ideal and could not be improved upon and decrying any interventions on the part of Brussels as excessive bureaucracy and an infringement of national sovereignty. The atmosphere in European transport policy at present therefore must be described as one of extreme lethargy.

1. A way out of the controversy between the advocates of a 'small steps' policy and those who call for an overall plan

102. Your committee would like to help to moderate the rigid positions at present adopted in the discussion on transport policy in Europe by those who advocate a small steps policy and by those who believe that no progress can be made without an overall plan.

103. The advocates of a small steps policy claim that they are only being realistic, in that it has been proved that the Community, especially the Council, is not in a position to take larger steps, let alone accept an overall plan. They claim that they are realistic enough to see that the Community must not bite off more than it can chew, and that regrettable mistakes could be made if too much were to be attempted at the one time and if each new step were not tried and tested before the next one was begun. The advocates of a small steps policy regard themselves as pragmatists, as they feel that the practical problems that will arise can be overcome by means of ad-hoc solutions worked out each time and that there is no way of knowing what problems will arise in the near future. They regard themselves as pragmatists, because they feel that fine words and beautiful flights of intellect are of no use, if it can be seen in advance that they will not be backed up by action. They feel that a small steps policy is more efficient, since the time needed to draw up grandiose plans could be more sensibly employed in making steady onward progress. Slow and steady wins the race.

SECTION III

A strategy for the further development of a common transport policy

101. Before your committee attempts in this section to sketch a new strategy for implementing a European Community common transport policy, it would be useful to give a further account of the way the pieces are arranged on the chessboard of European Community transport policy.

... The Council of Ministers is the most powerful piece on the board, but so far, apart from a brief interlude in 1965, it has shown its strength solely by rejecting the Commission's proposals and by the majestic contempt with which it has filed away important documents in its archives without making any attempt to deal with them or give an opinion on them one way or another. The Council's policy can neither be attacked nor criticized, since it has simply never pursued a policy.

On at least two occasions the Commission has tried to draw up an overall plan for a common transport policy. On neither occasion, however, were its arguments sufficiently compelling to persuade the Council, Parliament or public opinion that Brussels was capable of devising a modern transport policy, which could replace the Member States' outdated systems. The Council's failure to take decisions forced the Commission against its will to embark on a policy of small steps, by means of which it hoped to wrest the component elements of a common transport policy one by one from a dithering Council. Unfortunately, however, this tactic did not work, and the Commission simply gave up the struggle. In about 1973 it decided to make a virtue of necessity and began to defend the small steps policy as 'pragmatic', and this is what it has been doing ever since. This showed quite clearly that the target was no longer a genuine common transport policy but simply to paint over the cracks in the Member States' transport systems.

At regular intervals the Community's Economic and Social Committee has made valuable suggestions with a view to improving the Commission's proposals, but it also has failed to find a way out of the impasse.

The European Parliament is the only institution that has never given up the attempt to draw up an overall plan for a transport policy. On several occasions it has, either on its own initiative (the first and second Kapteyn reports) or by way of reply to the Commission's proposals (reports by Mr Müller-Hermann, Mr Brunhes and Mr Mursch), submitted fairly comprehensive plans for a genuine common transport policy which were not merely a timid compromise between the transport systems of the Member States but something completely new which could have led to the modernization of transport policy in Europe. Unfortunately, however, the European Parliament can only advise

of labour. It is technological progress and division of labour also that make European cooperation such a necessity. In addition to this, however, closer cooperation with all countries in the world is necessary, and particularly for Europe, which in its entire economy is so heavily dependent on world trade. The more those countries which have hitherto supplied Europe with raw materials develop industrially, the more they will look for a share in the profits arising out of transport services. This is why UNCTAD has become so involved in all questions relating to sea transport. In the same way the advance of industrialization in the COMECON countries is the reason for their emergence on world markets. Until recently the Soviet Union was an enormous landmass spanning two continents, and in the happy position of being able to organize its own trade between its highly industrialized areas and its underdeveloped areas along the lines of the trade traditionally carried out by Europe with other continents. In the last two decades, however, the Soviet Union has made such enormous advances that it can no longer confine itself to trade within its own territory, unless it wants to pass up important opportunities for growth. Without going into the political reasons for and consequences of this development at this point, it may be simply stated as a fact that the state-trading countries are penetrating on to world markets and world transport markets. They are doing this with all the resources at their disposal; for example, at the cost of the standard of living of their citizens (in Western terms one would have to say at the cost of the taxpayer) and without any regard for profitability, they are undercutting the prices asked by the Western concerns with which they are competing. This gives rise to serious problems for sea and air transport, but increasingly also for road transport and even in the near future for the Community's inland waterway transport (see above).

99. There can be no doubt that it will be possible in the course of negotiations to state objectives, and to find ways to persuade the state-trading countries to observe the rules of the game and to enable the developing countries to take their share in world transport without destroying the very foundations of free competition or forfeiting the high degree of efficiency that has hitherto characterized world sea transport. This presupposes, however, that all the parties concerned know their own minds and that each one operates a system in which efficiency and costs are the determining factors, and not prestige and lust for power, subsidies and tax subterfuges. In other words, if it is to be enabled to compete at world level with the developing countries and the COMECON countries, the Community needs a common transport policy for all five modes of transport (and presumably for long-distance transport also in the near future).

100. Your Committee cannot emphasise sufficiently the fact that as far as its transport policy is concerned, the Community is now under severe pressure of time. We must face up to the fact that the time for shilly-shallying is past. We have good reason to fear drastic consequences, unless within the next three to five years we have drawn up for ourselves a complete transport policy, on which we can fall back for support in negotiations with the outside world.

96. Apart from this important internal reason, however, there are at least two external reasons why the common transport policy is engaged in a race against the clock. The first is that work is progressing steadily on the Rhine - Main - Danube canal, and this is a time-bomb ticking away under the chair of every Western European politician engaged in shaping transport policy. When this piece of engineering, which is one of the wonders of the century, is completed - probably around the beginning of the '80s - nothing in Central and Western European transport policy will ever be the same again. The countries of Southeast Europe and the Soviet Union will be able to penetrate through this canal into the Rhineland and into the canals of Western Europe, and they will invoke the terms of the Mannheim Convention to demand freedom of the waterways for themselves. In Germany there are still some legal experts on transport matters who believe that it will be possible to debar the Eastern European competitors from the Rhine because of West German sovereignty over this section of the canal, but this is no more than wishful thinking. The position is in no way altered by the fact that the German authorities are stressing German sovereignty over the new waterway by levying shipping dues on the completed stretches of the canal. For some time now the Soviet technical journals have been setting out the arguments that will be advanced by Soviet lawyers for demanding the freedom of the waterways. And no matter what happens, negotiations will be held in which the Community will cut a very poor figure, unless a common policy on inland waterway transport has been worked out by then, including regulations on infrastructure costs, taxation, capacity and pricing. We must not forget either that these negotiations will not take place in the Palais du Rhin in Strasbourg, headquarters of the Central Commission for the Navigation of the Rhine, but in all probability in New York in the United Nations Building.

The Central Commission for the Navigation of the Rhine has meanwhile made a great deal of progress in discussing these questions, although the fact is that a solution is required that has the backing of the whole Community.

With the adoption of a supplementary protocol to the Mannheim Convention on 23-24 November 1978 the Council took the first step in this direction. There is still a long way to go, however.

97. The second external reason why the Community is under pressure of time in working out and implementing a common transport policy is the increasing competition from third countries. This comes on the one hand from the developing countries, which are marching relentlessly onward and on the other hand from the COMECON countries, which are anxious to push their way on to the world market with its rich pickings in foreign currencies.

98. The world is getting smaller all the time. Countries that formerly hardly knew anything of each other are now dependent on each other in every aspect of their daily lives and economies because of the worldwide division

If difficulties crop up over and over again in our negotiations with, for example, Switzerland and Austria, on whose cooperation the Community depends so much because of their geographical position, this is not because these neighbouring countries are in any way lacking in goodwill. On the contrary, they have shown at every turn that they are prepared to agree to sensibly planned and carefully worked out Community proposals and to incorporate them into their own policies. However, how can Switzerland be expected to negotiate with the Community on the Mannheim Convention when our own policy on inland waterway transport is in its present state? How can Austria be expected to negotiate with the Community on payment for the use of transport infrastructures, when the Community has taken no step forward in the past twenty years in its effort to regulate this matter and when most of us do not even believe any longer that we can ever do anything about it?

92. Within its own boundaries the Community has destroyed public confidence in the achievement of a transport policy, and it has not gained any credibility in the outside world.

93. The Community must therefore adopt measures to restore confidence and credibility, and these measures can only take the form of the adoption by the Council of Ministers of a long-term action programme with clearly defined objectives.

3. The common transport policy in a race against the clock!

94. Until recently it was felt that there was lots of time to develop a Community transport policy. Now, however, it is becoming increasingly clear that this is not the case. The various reasons for this will be set out in the following paragraphs.

95. In the next few years the Community must make the transition from a customs and agricultural union to a genuine economic and monetary union, i.e. to a real self-contained Economic Community. Recent events on the world economic scene have shown that we can no longer coast along in the wake of the United States of America. However, a common transport policy is absolutely essential for any economic union. We have to realize that many elements of a transport policy will need a certain 'running-in' period before they begin to function perfectly, and to this extent alone we have to face the fact that we are racing against the clock. Mr Mursch's report explains why an economic union is inconceivable without a transport policy.

regarded as compensation for this competitive disadvantage. But it is impossible to estimate even approximately whether the two factors - infrastructure cost advantage of the other modes of transport and the railways' deficit - balance out. Inevitably, therefore, the entire business management structure of the railways lacks transparency and all plans and decisions concerning the railways are not based on proper accounting methods or economic criteria.

156. Your committee would point out that the absence of a solution to railway deficits leads to a rationalization loss which may well result in a reduction of several per cent in the standard of living of the population of Europe as a whole. This is a dramatic policy failure in all the Member States. If it took corrective measures, the Community could achieve an enormous rationalization benefit for all the Member States.

157. Your committee would also point out that because of the extent to which transport routes are interrelated on an international scale, no solution can be found at national level even in the case of the railways, despite their regional monopolies, and that the European Community covers a sufficiently large area for it to be able to implement a basic change in railways policy without any risk of major international distortion of competition with respect to third countries. On the contrary, if the Community implemented such a policy successfully, it is likely that neighbouring third countries would accept and help to support that policy.

158. The harmonization of social provisions, fiscal and technical harmonization in the railways sector can be taken step by step and their timing aligned with the corresponding measures in the other modes of transport so that at every stage the effects and cost burden of social, fiscal and safety provisions applicable to all modes of transport could be brought into line.

159. The reorganization policy, however, must not be approached piecemeal: it must be adopted and implemented as a whole, with particular reference to measures adopted in the other modes of transport for the recovery of infrastructure costs.

5. Ports

160. For too long now the Community has excluded ports from its activities and indeed from its thinking, regarding them as coming under the sea transport sector, and thus, pursuant to Article 84 of the EEC Treaty, outside its jurisdiction. On the basis of the trends observed since 1953, the European Parliament has come to the conclusion that, because of the geographic structure of the European continent, virtually every

policy, e.g. in connection with the accession of the Community as such to this international agreement. The review conference must submit a long-term plan for the apportionment of infrastructure costs and their recovery through fuel oil taxes, vehicle taxes (a vehicle tax for barges could be made up of contributions from the laying-up fund, from scrapping funds and canal tolls), for a capacity policy and a price policy for inland waterway transport. The proposals will require Switzerland to make more sacrifices than it does at present. However, the Community can offer Switzerland something in return: Swiss barges could in the near future sail through Community countries not only to the ports in the Rhine delta but soon to Odessa and Marseilles as well.

152. The other details of the inland waterways policy, such as social provisions, recognition of certificates, etc., can be approached piecemeal on the same basis as in the road transport policy: the greater the degree of harmonization, the less control needed for international transport; for every step forward in equality, an additional measure of freedom .

153. Once again we must note, however, that this network plan for inland waterway transport is interconnected with the network plan for road and rail: the great step forward towards the recovery of infrastructure costs by the inland waterway sector, that is, the transfer from the national budget via taxes and levies to the inland waterway carriers and from them via their charges to the transport users, can only succeed if at the same time the inland waterway transport sector's competitors - road and rail - bear their infrastructure costs in full. For the railways this means a reorganization of their finances and an end to the practice of subsidizing their losses.

4. Railways

154. Whereas the inland waterway transport sector and the roads compete only in some areas, the railways compete fiercely in almost every sector of their activities with one or both of the other modes of transport. It is therefore reasonable to begin the section on railways by considering coordination which, in the case of the other two modes of transport, was dealt with at the end of Sections 3 and 4. The railways bear their own infrastructure costs and since the end of the last century have been subjected to many government policy decisions which their competitors have been spared. This has adversely affected their competitive position and resulted in large deficits in all countries.

155. The Community has already drawn up a complete package of regulations to reorganize the railways, the only drawback being that they are not applied. In practice, the Member States have not given up the idea of covering all the railways' deficits, nor have they done away with the out-dated burdens imposed on the railways. The reason for this is very simple: Until such time as the recovery of infrastructure costs has been regulated for the other modes of transport, the railway deficit can be

146. In its assessment of the Mannheim Convention your committee would not like to give the false impression that it considers the Convention as disastrous for the Community. On the contrary, it is a piece of European legislation from the previous century. All the difficulties arising from it do so only because the Member States of the Community are not the only signatories to the Mannheim Convention. And this fact is in itself no reason to fear the worst for the Community transport policy. As we have already said, Switzerland has long since demonstrated that it is prepared to adopt any sensible proposal which fairly takes account of its interests and does not call for greater sacrifices than the Community countries are prepared to make in the interest of modernizing the transport policy. But mutual trust cannot be marketed piecemeal or divided up into individual measures. For this reason as well as because of the interdependence of all measures relating to internal waterway transport - recovery of infrastructure costs, tax harmonization, price formation, approximation of capacity, etc. - one major step which must be incorporated in the network plan for Community action in this sphere is the updating of the Mannheim Convention. The accession of the Community to the Mannheim Convention could help to bring this about.

147. The Community must not attempt to get round the Mannheim Convention by individual measures. The Court of Justice of the European Communities was quite right to criticize this policy when it delivered its ruling on the arrangements for laying up vessels.

148. What is required is an extension of the principles of freedom laid down in the Mannheim Convention to the west European inland waterway sector as a whole and the updating of the rules relating to Rhine traffic to bring them into line with modern conditions and with the need to coordinate the various modes of transport. The Central Commission for the Navigation of the Rhine is working on these questions, but a modern system can be established only through cooperation between the CCNR and the Community.

149. The Community's attempt to control capacity on the Rhine by establishing a laying-up fund to compensate owners of temporarily laid-up vessels is a totally unacceptable measure. Anyone can see that a measure relying on adaptation to the economic circumstances of the day and to water levels must end in fiasco unless at the same time a fundamental adjustment is made to the long-term demand situation by means of a scrapping operation backed up by our on-going capacity policy.

150. So far the Court of Justice has protected the Community against this inevitable failure by declaring the laying-up scheme contrary to the Treaties on altogether different, i.e. institutional, grounds.

151. The common inland waterway transport policy can make no progress until the Mannheim Convention is adapted to the requirements of a modern transport

wait for the adoption of the cost recovery system but may be tackled in advance. (The Community's tasks in this sphere - individual projects - include large-scale projects such as the construction of a Channel Tunnel.)

141. The remaining decisions may be taken step by step. For example, harmonization of the other licensing conditions can be introduced progressively according to objective and subjective criteria. As regards international transport, these individual measures can be aligned with each other so that in each case progress in the sphere of cost harmonization can be accompanied further progress towards liberalization, i.e. an increase in quotas and relaxation of the rules relating to price formation.

142. This section on road transport would be incomplete without a reference to the fact that all the proposed arrangements must be fitted into an overall plan to coordinate the various modes of transport. The timing of measures for the recovery of infrastructure costs for road transport must be aligned with the programme to reorganize the railways and or course with a corresponding programme for the recovery of infrastructure costs in the inland waterways sector. The liberalization of road transport must also be aligned with progress in a common ports policy, since many aspects of present road transport policy in several Member States are carefully geared to the prevailing competitive situation in the ports and cannot be changed unless that situation is changed.

3. Inland waterway transport

143. The major objectives of a national inland waterway transport policy are basically the same as for road transport, although the emphasis is different. For example, in the inland waterway sector a satisfactory solution has already been reached in the harmonization of the dimensions of canal cross sections and barge dimensions.

144. One specific feature of European inland waterway transport policy is that all attempts to draw up common rules repeatedly come up against the Mannheim Convention. When plans are being considered for the harmonization of capacities, recovery of transport infrastructure costs, price policy, fiscal or social harmonization, account must always be taken of the fact that barge traffic on the Rhine is subject to obligations under international law laid down in the Mannheim Convention.

145. Your committee would emphasize that there is no point in attempting to draw up one inland waterway policy for the area covered by the Mannheim Convention and another elsewhere. This would be pointless in particular because in geographical and economic terms the Rhine is the backbone of the west European inland waterway system.

and fractions of percentage shares in the vehicle market which are at stake but the transport policy as a whole and multi-million pound road construction decisions, then surely at sometime in the near future the Community would find the strength to work out a solution which would provide a guideline for the next 50 years and one which many countries in the world would probably follow. The decision on the maximum dimensions and weights for commercial vehicles is as important as standardization of track gauges for the railways.

137. Once this basic issue has been decided, the next problem is the introduction of a common system for the recovery of infrastructure costs. The method of charging must be based on the 'user pays' principle. It must be as equitable as possible although total perfection need not be sought. In any event, a more difficult problem than finding a sophisticated formula for apportioning costs among the various road users is to establish what basic and secondary costs should be included when infrastructure costs are being calculated. In recent years environmentalists have put forward some convincing arguments for the inclusion in infrastructure costs of all secondary expenditure associated with road traffic, such as protection against noise, city centre redevelopment, provision of parking facilities, rehousing, traffic safety, administration of justice, traffic police, secondary costs arising from accidents and not covered by insurance, etc.

138. The Community faces a formidable task but in solving this problem it would be serving its own interests by promoting the common transport system, and also those of the nine Member States, which have so far been unable to find a satisfactory solution. If, on the basis of the current Commission proposals, the Community succeeds in working out a good and up-to-date system for recovering infrastructure costs, then it is highly probable that many third countries will follow its example, for nowhere in the world has such a system been developed.

139. Once a common system of charging for the use of transport infrastructures has been adopted, the next step will be to reach agreement on common arrangements for the collection of these charges, leading to harmonization of vehicle taxes, fuel oil taxes and road tolls. (To be meaningful, both measures must naturally be adopted at the same time.)

140. After deciding on allocation of costs and collection arrangements and thus resolving the problem of infrastructure costs, the Community can develop a long-term common road construction finance programme as part of its cooperation in the sphere of government budgets and conjunctural policy. The Community's minor road construction tasks - for example, closing gaps in the road network at the borders between Community countries (the Community job to do at the internal frontiers) not only for long distance routes but also for regional and even local road systems - need not

- decisions on the licensing of road users' vehicles according to their technical specifications,
- decisions on price formation.

If we consider the order in which these decisions must be taken and what internal links exist between these individual decisions and between them and other transport policy decisions, then we see that improvement of the road network depends quantitatively not only on the financial resources available (the amount of which is related to the system used for recovering infrastructure costs but also on the demand for road transport services and on the decision on how far the demand should be met when other modes of transport (railways) are available. Qualitatively, decisions on road construction depend largely on the kind of vehicles to be allowed on the roads, that is, on the maximum dimensions and weights. Bridges and bends must be tailored to the largest vehicles authorized. Agreement on a long-term road construction programme can be reached only if the kind of vehicles to be using the roads is known in advance. Agreement on a meaningful common system for recovering infrastructure costs - which requires alignment of specific transport taxes, especially vehicle taxes and fuel oil taxes and a common policy on any road levies such as motorway tolls - can be reached only if the kind of road vehicles to be authorized is known in advance. Finally, agreement on a capacity policy relating to the number and carrying capacity of goods transport vehicles can be reached only if the maximum dimensions and weights are laid down at the outset.

135. As regards the integration of transport factors into the overall network plan to be drawn up, it becomes obvious from the above that the question of dimensions and weights is of vital importance for major progress in a road transport policy and that there can be no hope of making major headway with the common transport policy until this problem is solved.

136. The Community would therefore do well to concentrate its initial efforts on finding a solution to this problem. It may well be that the adherents of the global policy, of whom we have so many in the Community, will question the wisdom of making any progress dependent on a solution to one of the most difficult problems. Nevertheless, experience has shown that tax harmonization has proved impossible and no other decisions have been taken. Why is this so? Simply because the problem of dimensions and weights has not been resolved. As a matter of fact, in the proposals submitted by the Commission, Parliament and the various Member States at present being considered by the Council of Ministers all that is at issue is an axle weight of half a ton. If only all those involved could finally realize that it is not simply the competitive position of the motor industry

130. The common transport policy must provide for free movement of transport market through liberalization of trans-frontier traffic, establish competition on the common transport market on an equitable basis through harmonization of cost factors and state intervention, and prevent structural distortions from arising between the Member States by the implementation of a common solution to the problem of coordinating the various modes of transport. It must also lend a European dimension to infrastructure policy.

131. Such a target excludes the possibility of regarding the common transport policy as a mere embellishment exercise; what is needed is a common transport philosophy. This means, for example, that we cannot have one Member State treating the railways as a public service and a public utility while another considers them to be a commercial undertaking like any other. We cannot have one Member State spending enormous sums of money to extend its inland waterways and motorway networks while another prefers to restrict these modes of transport and encourages the railways, and so on.

132. From the outset it is impossible to imagine that the Community will either decide on the principle of a transport policy based on the free market economy or opt for a strictly controlled system. As previous parliamentary reports have pointed out, the Community's transport policy will no doubt lead to a mixed system halving between total freedom and total control. We can assume therefore, that the discussion of principles need not be pushed to their ultimate conclusion. However, we must bear in mind that the overall structure of the European Economic Community, is based on free competition, its basic element, and that consequently the transport policy may diverge from a free transport market only in cases where it is unavoidable and only to the extent that it is absolutely necessary. Otherwise - as is at present the case in so many Member States - it would be a foreign body within the general economic environment.

133. Having sketched out the objectives, we should now put forward some suggestions concerning the content of a network plan; for the sake of simplicity we have considered the various modes of transport individually, but this must not blind us to the fact that in the actual network plan to be drawn up by the Commission, one of the most important factors could be the interconnection between the various modes of transport.

2. Road transport

134. The major functions of a national road transport policy are:

- decisions on improvements to the road network,
- decisions on how the costs of the road network should be recovered from road users,
- decisions on the licensing of road users and transport undertakings,
- decisions on the licensing of road users' vehicles according to number and carrying capacity,

far-reaching freedom of movement across frontiers, although the attainment of total perfection in this sphere is expressly excluded. With this reservation we can say that the objective of the common transport policy is the establishment of a 'common transport market'. Since the Community's overall policy is aimed at freedom of movement in a larger market and encourages competition as the driving force for progress, the transport policy, too, must be based on these principles if the transport sector is not to be a foreign body in the economy as a whole. Competition is intended to encourage transport undertakings to be more efficient, and governments should help boost the performance of the European transport system by pursuing an appropriate infrastructure policy.

129. Consequently the common transport system should have the following characteristics:

- competition should enable the undertakings and modes of transport which show their superiority in terms of quality and cost to become firmly established on the market;
- transport undertakings must not discriminate between different but comparable transport users;
- governments and public transport undertakings must not adopt or maintain provisions which discriminate between the various modes of transport (principle of equal treatment);
- there should be no obstacles raised or price increases made for international transport across the Community's internal frontiers where these do not apply to domestic transport in the individual countries;
- freedom of establishment for undertakings and freedom of movement for transport workers must be subject to no greater restrictions in the Community as a whole than in the individual Member States;
- all state intervention in the Member States rendered necessary by the special aspects of the transport market must be harmonized so that any remaining differences in the legislation do not result in any substantial cost distortions for transport undertakings or transport users;
- all interventions on the common transport market for reasons of short-term economic policy, regional policy, energy policy or environmental policy should be based on common principles so that no market disturbance ensues,
- the Member States and the Community should lay down common long-term objectives for infrastructure policy.

SECTION IV:

Network plan for a common transport policy

125. It is not the aim of this section to formulate a complete network plan for the Community's transport policy since this is - as we have already said - the Commission's responsibility. Again, we have already said on many occasions that this report does not aim principally at formulating objectives or elaborating methods but at setting out the implementation measures and tactics for the procedures to be applied in the sphere of the common transport policy. However, a fairly large number of members of your committee have suggested that this report could be used as the basis for a debate both in committee and in the House, on the content of the common transport policy. It can indeed only be to our advantage if we can avoid an abstract procedural debate which takes no account of the essential issues. Another argument in favour of an in-depth debate is the fact that since Parliament's last resolution on this matter, in 1974, there have been some changes in the composition of Parliament with the result that not all the political forces currently represented in Parliament have had the opportunity of expressing an opinion on the principles of the transport policy.

126. The following remarks concerning the possible outline and content of a network plan for the common transport policy should help in preparing for an in-depth debate of this nature. References to previous parliamentary reports will be unavoidable.

1. The aim: a liberal common transport market and provision for the Community of the best possible transport services

127. Like any other serious action programme, a network plan must start with an idea of what is to be achieved which is regarded as a 'pre-set target' when the network plan is being deduced from the systems analysis and the methods for implementing the desired procedures are developed from the way in which the individual elements interconnect.

128. What should the common transport policy take as its objective? The transport objective may be deduced from the idea behind the Community as such. A common market and increased trade on the basis of free competition should increase the standard of living of the citizens of the Member States or at least maintain it at a specific level. In the transport sector, too, that is in the transport services market, conditions similar to those existing in a national market must be created. Since the establishment of the ECSC in 1953 the term 'conditions similar to those existing in a national market' has been understood to involve

3. A network plan for the common transport policy

121. The Community's transport policy has ground to a halt. We must find a means of impressing on the decision-making bodies (Council), the economic circles directly concerned and the public in general the need for European Community measures. This could be achieved by means of a network plan analyzing the present situation with all its unhealthy features, defining the objectives of transport policy and showing how one can proceed to the attainment of these objectives. The way in which the various elements of transport policy are interrelated would also have to be shown, together with a clear indication of which measures, for example, should be taken together, which would depend on the prior adoption of other measures, etc.

122. This will inevitably cause old arguments to flare up again, but this time, let us hope, on a higher level. For example, before the EEC Treaty was concluded and even afterwards, there was much discussion as to whether cost bases should first be harmonized so that more liberalization could be achieved in international transport, or whether the reverse was the proper procedure. Each party to this discussion argued from the standpoint of his own interests without any attempt to get down to a detailed analysis of the real situation. Finally it was agreed that harmonization and liberalization should proceed side by side. 'For every piece of harmonization a piece of liberalization', etc.

123. However, in view of the 'small steps' policy the two questions were never discussed at the same time, with the result that, as each government enjoyed an absolute right of veto in the Council of Ministers, the friends of harmonization shot down proposals for liberalization every time, while the friends of liberalization did the same to harmonization measures. A Community policy cannot make any real progress in this way.

124. In the light of the dire consequences with which the Community is threatened, it is absolutely imperative that an action plan be soon drawn up for transport policy, which will force the decision-making bodies to do something. It should not be just a list of measures and deadlines and unreasoned priorities, but rather a network plan drawn up on the basis of systems analysis, which will set out clearly the way in which the various measures are interrelated. This is important, since after all these years without progress, it is essential to inspire conviction and win back confidence.

transport policy measure taken in the road, rail and inland waterways sectors has widespread repercussions on competition between ports. This was fully explained in the Seifriz and Seefeld reports (Doc. 140/67 and Doc. 10/72) and needs no repetition here.

Since 1974 the Commission, in cooperation with ports representatives, has compiled important basic data and improved its general knowledge of the subject, although it has not so far submitted any specific proposals.

161. In a European network plan for the development of a transport policy, therefore, we must ensure that we reach agreement on certain principles for a seaports policy at a very early stage.

162. In this instance yet again the Community cannot hope to get round the problem with a piecemeal approach.

163. A European ports policy means that the Community must work out how the ports' competitive position should develop once the transport sector has been reshaped into a common transport market. It is not the task of this report to go into this matter in detail, but your committee must emphasize that a European policy applicable to rail, inland waterways and roads will be incomplete unless the ports' interests are also taken into account. If we do not accept this we shall have to reckon, as in the past, with justified resistance to the Community's transport policy on the part of pressure groups representing the ports.

164. Quite independently of the above arguments, if sea transport is brought within the sphere of the Community's transport policy a common ports policy becomes imperative. It could be, more over, that the overall concept underlying the network plan would help to resolve some of the difficulties that have arisen in the past when ports policy has come under discussion: harbour dues, port regulations, port extensions, improvement to shipping channels, etc., come into the foreground the moment sea transport is included in the Community's sphere of activity. Port competition, especially with reference to connections with the hinterland and all the associated transport aspects, must however, first be placed in context with them and an outline of a future ports policy must be included in the target for the network plan.

6. Sea transport

165. There is no need to consider the sea transport sector at great length since it has recently been dealt with in detailed reports by Mr Prescott (Doc. 479/76), Mr Seefeld (Doc. 5/77) and Mr McDonald (Doc. 47/78). An approach based on systems analysis will show that sea transport policy is closely allied to shipbuilding policy and that at present the Community may well be in danger of making a big mistake: the Council of Ministers has accepted a conciliation procedure which, however, is only to cover policy towards third countries and cooperation in international organizations. There is a discrepancy between the Community's internal transport policy and its international sea transport policy: with no logical justification, ports policy and sea transport policy are not applied to trade between the Member States.

166. Your committee would point out that the policy towards third countries will have no credence unless an internal sea transport policy is also pursued.

7. Air transport

167. As in the case of sea transport the characteristic feature of the air transport policy is the close connection with the policy on the aircraft industry. Fragmentation in the aircraft industry corresponds to fragmentation in air transport itself. The European aircraft industry can only make progress if it has a sufficiently large and strong domestic market. It is quite true that of all the continents, Europe is the least suited to air transport. It is, therefore, all the more important for the Community countries to combine their small airspaces and control them jointly.

168. Eurocontrol should not be run down but rather improved, and a common commercial airspace should correspond to the common technical airspace. Negotiations with third countries should only be carried out jointly and within the Community there should be no horse-trading for landing rights before the various routes are allocated; instead the Community should draw up a rational system of air routes for Europe and only then grant licences to the individual airlines (which cooperate most efficiently). These questions have been considered in detail in the reports drawn up by Mr Noè and Mr Guldberg (Doc. 195/72 and Doc. 203/76).

169. It should also be pointed out here that the nature of the connection between the various aspects of the air transport policy has not been made sufficiently clear in Community discussions. The Commission has veered between putting most emphasis on air transport or the aircraft

industry and has never been able to make clear the real internal connection. The priority programme for air transport adopted by the Council at its June 1978 meeting gives the impression that the real priorities, e.g. the future of Eurocontrol have been omitted because they are highly sensitive subjects. Nevertheless, a start has been made and it remains to be seen what progress can be made in the near future.

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170. In conclusion, your committee would once again emphasize that it is the task of the Commission to draw up a network plan for the implementation of a common transport policy, submit this network plan as a proposal for a Council decision and then, once approved by the directly elected Parliament, defend its proposal in the Council with all its might.

171. Some proposals for improvements in the Community's procedures will be given in Section V. However, none of these proposals can replace the need for the Commission to try to push through a binding plan of action in the Council.

SECTION V

Proposals for improving the working methods of and cooperation between the institutions of the Community as regards the common transport policy

172. The considerable lack of progress made with the common transport policy is partly due to institutional deficiencies in the structure of the Community. Many of these deficiencies affect not only the transport policy, but the Community as a whole. Your committee would not like to anticipate more thorough investigations by those bodies of Parliament and the Community specifically concerned with institutional questions. But it does wish to make comments on all institutional questions which appear of importance for the transport policy, and the appropriate bodies may view these comments as a contribution to their working documents. Only those proposals whose implementation can be of use in advancing the transport policy have been incorporated in the motion for a resolution.

1. Working methods of the Commission

173. Particularly since the Luxembourg disagreement of 1966 the Commission has fought a desperate battle to assert itself as the political organ of the Community rather than being demoted to the Council's secretariat. In the transport policy field there have unfortunately been all too many occasions when the Council has assigned one task or another to the Commission, even though under the Community's constitution the Commission has an exclusive right of initiative and a monopoly as regards the drafting of proposals.

174. All in all the Commission has perhaps shown somewhat less courage in the transport field than in other sectors. Thus in the areas of air transport and sea transport it has for years (in one case six years!) left the initiative to the Council (which has done nothing), with a reference to Article 84(2), while in other fields the Commission has been active even though apart from Article 235 the Treaty does not provide any legal basis for such action.

175. In addition, the Commission does not have sufficient staff for the transport sector. Only about 50 Category A officials are employed in the Directorate-General for Transport, and they are hopelessly overworked in many sub-sectors. From time to time a single official has had to deal with questions relating to sea transport and ports and top-level experts from nine countries at the negotiating table.

Two or three Commission officials handle the important problems of the railways, and this at a time when there is growing concern over the millions being lost on the railways, more insistent demands are being made for radical reforms and the railway workers' trade unions are staging demonstrations in Brussels.

In many areas the Commission can just about cope with the work in progress (32 files), without taking any new steps to provide for the future. It is hardly able to make any contribution to important discussions. In various areas it has simply ceased work altogether because of lack of staff. These include:

- Transport safety
- Transport and environmental protection
- Transport and regional policy
- Research policy in the transport field
- Urban transport

and many others.

Your committee would condemn any refusal during the deliberations on the budget to allocate more staff to the Commission to deal with transport questions on the grounds that the transport policy is making no headway. It is to be feared that one of the reasons for the lack of progress is precisely the shortage of staff in the appropriate directorate-general.

Another example of the serious consequences of staff shortages is the abandonment of fundamental debates on all sectors before they are brought to any kind of successful conclusion.

176. In the past the Commission as a body has also neglected its responsibility with regard to transport policy. Transport policy may be regarded as not having any 'glamour', but it should not therefore be left entirely to the Commissioner within whose terms of reference transport falls. This is unfair to the Commissioner concerned and does not contribute to the Commission's ability to convince the Transport Ministers. Since 1973 the idea of getting the Council to agree to an overall line on transport policy has apparently been abandoned. Your committee has noted that since 1973, for example, the Commission has openly pursued and defended a 'step-by-step policy' in the transport sector, while equally frankly advocating the development of an overall approach in other areas (this is particularly true of the regional policy, for which your committee is likewise the committee responsible). The Commission communication on guidelines for Community regional policy (Doc. 183/77, p.1) states, for example, that 'the time has come for the Community to define clearly an overall approach to Community regional policy for the coming years and to specify in detail the measures to be adopted within the framework of the policy'. The same has long been the case with transport, where the problems are no more difficult. It can therefore also be said that there is a lack of internal coordination within the Commission, which can but be harmful to the credibility of European policy.

2. Cooperation between the Commission and the Council

177. Day-to-day cooperation between the Commission and the Council takes place in the transport working party of the Permanent Representatives of the Member States, a group which will be dealt with separately below. This 'lower' level is often unable to make a political breakthrough in controversial matters. The Ministers themselves meet no more than three times a year at Council meetings, which is scarcely sufficient for the development of new ideas, and the Commissioner does not have sufficient opportunity to exchange views with the governments on these rare occasions. Your committee therefore endorses the proposal that a 'hot line' should be installed between the relevant Commissioner and the Transport Ministers. More frequent visits to the capitals would also help the Commissioner in his endeavours to keep the talks going at political level. Although the general lack of time from which politicians suffer is likely to create a number of organizational difficulties and although the Commissioner must ensure in making such contacts that he maintains a strict balance among the various Member States, closer contact might nevertheless make for greater progress.

3. Cooperation between the Commission and Parliament

178. The cooperation between the Commission and Parliament can be described as satisfactory. The Commissioner responsible for transport or senior officials in his directorate-general always attend the meetings of the Committee on Regional Policy, Regional Planning and Transport at which transport questions are discussed. Wherever possible, the Commission has also adopted amendments to its proposals put forward by Parliament pursuant to the second paragraph of Article 149 of the EEC Treaty. Parliament's services are in constant and close touch with the Commission's services. One improvement that might be made would be for the Commission to take greater care to ensure that it informs Parliament - or at least its committee responsible - of new developments before it informs the press.

4. Cooperation between Parliament and the Council

179. As regards cooperation between Parliament and the Council it must unfortunately be said that as a general rule the Council takes too little notice of the European Parliament's opinions. Although the Council has in recent years very generously made a custom of always consulting Parliament on transport matters even where consultation is not stipulated in the Treaty, this generosity on the formal side has unfortunately not been accompanied by the same degree of care in taking account of the contents of Parliament's opinions. It is an open secret that it is very difficult in the Permanent Representatives' transport working party to direct attention to Parliament's opinions, and it is an equally open secret that even at Council meetings frequently no more is done than formally establish whether Parliament has delivered an opinion without the text of this opinion actually being available

in the conference room. Although this also applied to other fields, it would be a scandal if the Council of Transport Ministers regularly negotiated without taking account of Parliament's opinion.

180. In this regard your committee would like to make a proposal, whose feasibility should be established by the bodies responsible for institutional questions. This proposal can be seen as a compromise compared with those aimed at opening Council meetings to the public (because they are meetings of the Community's legislative organ).

181. The European Parliament's rapporteurs for the relevant items on the agenda or the chairman of the appropriate committee should be present at all Council meetings and take part in the negotiations in an advisory capacity. Their specific task would be to present and explain Parliament's opinion to the Council. It cannot be objected that this would unreasonably prolong and complicate Council meetings: the present ten representatives (nine Member States plus Commission) would be joined by only one other representative. Moreover, a constitutional situation laid down by the Treaty would be restored in that there would be an assurance that the Council was taking account of Parliament's decisions. Nor could the proposal be opposed on the grounds that it would make excessive demands on the time available to European parliamentarians: after direct elections, when most of them will no longer have a dual mandate, Members should be capable of performing this function. Finally, the objection that participation by Members of Parliament in Council meetings would blur the line drawn between the powers of the two institutions is not valid: for one thing, Parliament's representative would act only in an advisory capacity and for another, the construction of the Community institutions is such that the Council and Parliament together form the legislative.

182. Just as Parliament should be represented at the political level in the Council, an official of Parliament should attend meetings of the Permanent Representatives' transport working party (and other meetings of the Permanent Representatives, too) to ensure that account was taken of Parliament's opinions by presenting and, where necessary, explaining them. This official might be the secretary of the appropriate parliamentary committee or possibly another official appointed by the Secretary-General for the field concerned.

183. This proposal is not at variance with the proposal made by the Political Affairs Committee that the conciliation procedure now used for budgetary questions should be extended to other important questions and that in matters of exceptional importance the Council should receive delegations from Parliament. It rather supplements these latter proposals, in that, apart

from the questions of outstanding importance, it would improve the situation with regard to the conduct of day-to-day business and, above all, it would provide for action before the Council had taken a decision, whereas the conciliation procedure serves to amend Council decisions already taken.

184. As regards cooperation between the Committee on Regional Policy, Regional Planning and Transport and the Council of Transport Ministers there has been some progress in recent years: it has become the custom for the President of the Council of Transport Ministers to attend one committee meeting during his period of office to present his programme for that period and exchange views with Parliament. This procedure unfortunately means that each Member State in the person of its **Transport Minister appears** before the parliamentary committee only once in every four and a half years. It is also extremely unlikely that a Minister will appear before the committee more than once, unless he should remain in office for four and a half years. Before the enlargement of the Community the Transport Committee used therefore to send a delegation to all the capitals whenever an important matter arose to hold talks with the then six ministers. The intention was to get the transport policy moving again - still a topical question.

185. It has also been proposed that the Council of Transport Ministers should receive a delegation from Parliament at one of its meetings in addition to discussing the items on its agenda. This proposal was, however, rejected by the European Parliament's Bureau, presumably so as not to jeopardize the negotiations then in progress on a new procedure for cooperation between Parliament and the Council on budgetary matters. The present practice of Council Presidents attending committee meetings is the outcome of the rejection of these proposals. Unfortunately the discussions held with the Transport Ministers are usually unsatisfactory because the Ministers do not in fact have a political mandate to speak on behalf of their colleagues. Consequently the dialogue has always taken the form of the President of the Council submitting his programme - unofficially, of course - and then having to listen to outspoken criticism by parliamentarians of the lack of progress made in the transport policy, for which, however, he does not personally bear any responsibility.

5. Working methods of the Council

186. It has unfortunately become apparent that the Council is the eye of the needle for the Community. In the transport field possibly more so than in other fields it has been unwilling and frequently unable to take decisions.

187. The Ministers meet only on the rare occasions when sufficient

<u>Year</u>	<u>Number of Council meetings (transport)</u>
1973	1
1974	2
1975	2
1976	2
1977	3
1978	2

items on the agenda are ready for signing. But not enough items reach the stage of being ready for signing because the Council does not give the Permanent Representatives Committee clear instructions as to the course to be followed by the transport policy and it does not leave this committee enough room to negotiate.

188. The Council should therefore hold detailed discussions more frequently rather than simply acting as a signing machine. In particular, the Council should meet more often, at least four times a year. A major obstacle to the work of the various Councils of Ministers, and particularly the Council of Transport Ministers, has repeatedly proved to be the fact that each Minister acts as Council President for only half a year. This effectively prevents the Council presidency from carrying out its duties, especially in the second half of the year. By mid-September, after the summer recess, when everyone has returned from leave, almost half of that presidency's period of office has passed. Following initial discussions with the Council secretariat - i.e. by mid-October - the Christmas holidays and the end of the year are already in sight. Minister Chabert managed to arrange two Council meetings in the second half of 1977 only because he took the bull by the horns and submitted his programme in June, i.e. before his period of office began.

189. Your committee proposes that the period of office of the presidents of the various Councils of Ministers should be extended to a whole year and kept distinct from the period of office of the European Council and of the Council of Foreign Ministers. To maintain the balance between the Member States, thought might be given to staggering the presidency of the various Councils of Ministers: for example, in the first year Belgium would have the presidency of the Council of Transport Ministers, Denmark the presidency of the Council of Agricultural Ministers, Germany the presidency of the Council of Energy Ministers, etc; in the second year, Denmark would have the presidency of the Council of Transport Ministers, Germany the presidency of the Council of Agricultural Ministers, France the presidency of the Council of Energy Ministers, etc. This would undoubtedly create a number of organizational difficulties for the Council Secretariat, but this should not be taken as a reason for rejecting the proposal.

Your committee does not accept the argument advanced against an extension of the Council's period of office, namely that every Member State has its own special concerns that it would take more pains to further than other Member States, thus creating the danger that matters of importance to the Community as a whole would be pushed into the background with other matters given priority during the presidency of the Member State in question. Your committee feels that it would be the Commission's job to remind the Council presidency of its constitutional obligations, which do not allow it to advance its own special concerns at the expense of the Community's interests. Indeed, your committee has the impression that the opposite is more likely to be the case. Progress is often made in the Community only when a Commission proposal seems to favour one of the Member States, with the result that this Member State, particularly if it happens to hold the presidency, will spare no effort to get it implemented. The Commission could therefore argue that the Member States should get their turns at the presidency more quickly so that their energies could be unleashed more often on the furtherance of the various proposals.

190. To counter all these speculative arguments, it should be firmly stated once and for all that the Member State that holds the presidency should be an honest and impartial managing director on behalf of all the other Member States and that it is not entitled to feather its own nest during its presidency.

It is also conceivable, of course, that by way of compromise or a first experimental step the presidency of the various Councils of Ministers might be extended to nine months, thus averting in particular the unfortunate imbalance between the first and second half of the year.

6. Working methods of the Permanent Representatives' transport working party

191. That the most important body - where planning and decision-making in the Community are concerned - should be the Permanent Representatives Committee, or more precisely its transport working party, runs counter to the intentions of the authors of the EEC Treaty. The Council delegates to this body all matters on which it cannot reach a decision at its few meetings. In many cases today this body has assumed drafting functions, for which the Commission is in fact responsible. Moreover, there is no public or parliamentary control over this group of officials, which works in complete anonymity. Although representatives of the Commission are present at all meetings, they must tread very warily and are not entitled to vote. In addition, the transport working party suffers, on the one hand, from an excessive workload, since it is allocated tasks which should in fact be performed by the Commission: on the other hand, the officials forming the working party are usually left far too little room for manoeuvre in negotiations. As a result, it only shows its full strength when saying no

and when pulling Commission proposals to pieces and rejecting them.

192. Your committee therefore proposes the following: firstly, the Permanent Representatives' transport working party should receive clear instructions from the Council of Ministers as part of an overall approach; secondly, it should be given greater freedom in negotiating; thirdly, it should meet more frequently; fourthly, it should be subdivided into several groups so that work can continue on several questions at the same time: appropriately there would be a separate committee for sea transport and ports and another for air transport; thought might also be given to the setting up of separate committees for tax and infrastructure problems and for transport safety. Fifthly, as stated above, all meetings of the Permanent Representatives' transport working party should be attended by an official of Parliament, who could explain Parliament's resolutions and inform the chairman of the appropriate parliamentary committee of the state of work in the Council of Ministers.

193. It has been asked whether there is not a contradiction between asking the Council of Ministers to give clearer instructions to its working parties and, on the other hand, to give them greater freedom in negotiating.

194. Your committee does not feel that there is any such contradiction. At present the working parties have to deal with unrelated dossiers and are given no guidelines as to how they should seek solutions to the problems, only the instruction - each one from its own Minister - to see what can be done with the dossier that will not call for excessive changes at home in the national transport policy. This method can only be described as that of the lowest common denominator or that of least resistance. It restricts freedom to negotiate enormously, in the sense that the representatives of the Member States are instructed to propose only such decisions as will not upset the general line of their transport policies.

195. Until such time as the Community has decided where exactly it is going in this matter, the argument on basic principles will be fanned into flame afresh every time any smallest detail has to be discussed, apart from some insignificant matters that are not really part of the fabric of the general common transport policy, and there are very few such matters!

For example, let us suppose that the Ministers instructed their representatives to harmonize motor vehicle taxation in such a way that it was the same in all the Member States and to use taxes on oil to cancel out the difference between infrastructure costs in the various Member States.

If they were then given a free hand to negotiate the methods and details of tax harmonization on the basis of the Commission proposals, we would soon get over the present deadlock, where the tax assessment criteria are still being discussed.

7. Working methods of Parliament

196. Direct elections will probably be followed by an increase in the number of parliamentary committees. When the time comes, it would be advisable to re-form the old Transport Committee. Although the inclusion of regional policy and transport policy in the terms of reference of one committee has on the whole proved successful and may also be expedient in view of the connection between the two, it has become apparent that the majority of the committee's members are interested either in transport policy or in regional policy and only a minority is really active in both fields.

197. The Commission has indicated that it also would welcome the restoration of a special Transport Committee in the European Parliament. There would then have to be such close internal coordination between this committee and the Regional Policy Committee that proper attention would be given to the manifold relations between regional policy and transport policy. However, this gives rise to no special difficulties.

198. The parties represented in the European Parliament and Parliament's political groups should ensure that all the Member States and all the party groupings are represented by parliamentary transport experts, since Parliament's work suffers if too few Members are active in transport policy and if they are chosen haphazardly from countries and political groups.

199. As has already been said, transport policy is at present a field that is rather lacking in 'glamour'. But this must not be allowed to result in either the Commission or Parliament neglecting this vital area of European policy. All those in responsible positions should resist any such attitude.

8. Working methods of the Economic and Social Committee

200. For purely practical reasons it has become the custom in recent years for Parliament not to await the opinion of the Economic and Social Committee before delivering its own opinion. If it did so, the delay between consultation by the Council of the ESC and Parliament and publication of the two opinions would simply be doubled, assuming the two bodies each required the same amount of time for their work. Such a delay would in most cases be unacceptable.

The work of the Economic and Social Committee - like that of Parliament - has in the last few years, or in fact from the outset, suffered from the lack

of transport experts among its highly qualified economic experts. When the members of this body are being appointed, care should be taken to ensure that the important area of transport is not overlooked, and that the members of the Section for Transport and Communications should really be experts in the transport field.

It might also be appropriate to consider the proposal that members of the ESC should be able to send substitutes, as this would make it possible for highly qualified experts to attend its meetings for specific items on the agenda.

9. The possibility of instituting proceedings before the Court of Justice

201. The Court of Justice of the European Communities has already played a major role in transport policy. Examples of its activities are the important cases concerning the exceptional tariffs within the framework of the ECSC, the cases concerning road transport tariffs in the ECSC and those concerning Saar tariffs and the freedom of movement of seamen. But the most famous example is the first and so far only case in which two institutions of the Community, the Commission and the Council, have faced each other, the point at issue being the AETR (agreement on social questions in road transport). The judgment handed down by the Court of Justice on the question of the laying-up fund for inland waterway vessels is also very important.

202. In all these cases the Court of Justice has proved to be the most unyielding of the Community's institutions, and in several of the cases referred to above it has not restricted itself to deciding on the legal questions at hand, but gone on to interpret Treaty legislation to such an extent that the other institutions, Council and Commission, have also been given guidelines not only on the specific case but also on what generally constitutes European policy that is compatible with the Treaties. A large number of Members of the European Parliament might well therefore use the authority of the Court of Justice to establish whether the Council's failure to act in the field of transport policy is in conflict with the Treaties. It has been suggested that proceedings should be instituted by Parliament against the Council for failure to act on the basis of Article 175 of the EEC Treaty¹.

203. The motion for a resolution was referred to the Committee on Regional Policy, Regional Planning and Transport as the committee responsible and to the Legal Affairs Committee and the Political Affairs Committee for their opinions.

¹Doc. 202/76

204. On behalf of the Legal Affairs Committee Mr Riz has drawn up an excellent legal opinion, which is annexed to this report. In the Political Affairs Committee and the Committee on Regional Policy, Regional Planning and Transport, however, the general view is that it would be politically inopportune for Parliament to institute proceedings against the Council while the arguments about direct elections to Parliament continue.

205. It was therefore decided to propose that a new own-initiative report on the bases of the transport policy should be drawn up rather than institute such proceedings; hence the present report.

206. This should not, however, be taken to mean that the possibility of Parliament instituting proceedings against the Council has been completely excluded. On the contrary, it is conceivable that the directly elected Parliament will take such action if no further progress worthy of note has been made with the transport policy by that time.

207. It should also be pointed out that the remarkable activity of the Council in 1977 (three meetings, with twice as many legal acts adopted as the average for other years) might partly be due to the fact that the Council is impressed by the possibility of Parliament's instituting proceedings for failure to act.

208. The most important conclusion to be drawn from the Legal Affairs Committee's opinion is that Parliament has the power under Article 175 of the EEC Treaty to bring an action against the Council for failure to act.

209. In practical terms, the procedure for bringing such an action before the Court of Justice would be as follows:

The Committee on Regional Policy, Regional Planning and Transport would submit to Parliament, with the opinions of the Political Affairs Committee and the Legal Affairs Committee, a motion for a resolution calling on the Council to take action in the field of transport policy. Parliament would then have to adopt this motion for a resolution, and the President of Parliament would have to forward it to the Council. The Council would then have two months to answer. If it did not answer or if its answer was unsatisfactory, Parliament could institute proceedings within two months. The shortness of the period within which it may bring an action would create procedural difficulties for Parliament. It can scarcely complete its normal procedure within two months. Mr Riz's opinion, however, proposes a solution to this problem, which your committee endorses: when calling on the Council to take action, i.e. in the same resolution, Parliament might set up a special committee composed of members of the Committee on Regional Policy, Regional Planning and Transport, the Legal Affairs Committee and the Political Affairs Committee, with the President of Parliament as its chairman. This committee would examine the Council's reply and if it

appeared unsatisfactory, draw up a motion for a resolution containing the decision to institute proceedings and submit it to Parliament. If Parliament adopted this motion for a resolution, the President would bring an action before the Court of Justice.

210. One objection that has been raised to this procedure is that the transport policy is not helped a great deal if the Court of Justice establishes that the Council has, in infringement of the Treaty, failed to act. There is no way of forcing the Council to take action: the whole process would therefore have only a moral effect. In reply to this objection, however, it should be said that this moral effect must not be underestimated and that moreover a side-effect of the proceedings might be the following important development: the Council would almost certainly offer the defence in its reply and later in the proceedings before the Court of Justice that it had by no means been inactive. Its Representatives Committee had even been in permanent session. But unfortunately political differences of opinion had prevented unanimity from being achieved. This would give the Court of Justice an opportunity of interpreting the provisions of the Treaty regarding unanimity of decisions on the transport sector pursuant to Article 75(3). In all probability the Court of Justice would state when provisions concern the 'principles of the regulatory system for transport' and when it could be claimed that the application of such provision had a 'serious effect on the standard of living and on employment in certain areas' or 'on the operation of transport facilities', thus establishing a right of veto. It would further state to what extent taking into account 'the need for adaptation to the economic development which will result from establishing the common market' limits the possibility of exercising the right of veto. The Court of Justice might also have an opportunity of discussing the Luxembourg disagreement of 1966. A side-effect of such an action, which would affect far more than transport questions, would consist in the Court of Justice declaring, for example, that the rule concerning unanimity in the Council was in infringement of the Treaty.

211. Your committee endorses the various procedural proposals put forward by the Legal Affairs Committee in the opinion drawn up by Mr Riz.

212. Your committee proposes, however, that an action should not be brought at present, but that immediately after direct elections to the European Parliament the Council's activities in the transport sector should be re-examined with a view to bringing an action for failure to act. By that time it will also be apparent whether the sudden increase in Council activities at the end of 1977 has continued and the considerable backlog

as regards transport policy has been eliminated, or whether the Council has returned to its lethargy after this fairly large number of hurried small steps.

10. Summary of the proposals

213. To summarize, your committee proposes the following:

- The staff of the Commission's Directorate-General for Transport should be increased.
- The Commission should take more collective action on transport questions.
- There should be permanent contacts between the Commissioner responsible for transport questions and the Transport Ministers outside Council meetings ('hot line').
- When new political developments occur, the Commission should take greater care than hitherto to ensure that Parliament is informed before the press.
- The Council should take a more careful note of Parliament's opinions. To this end, Parliament's rapporteur or committee chairman should present and explain such opinions at Council meetings.
- An official of Parliament appointed by the Secretary-General should present and explain Parliament's opinions to the transport working party of the Permanent Representatives Committee.
- The Council of Transport Ministers should meet more frequently, at least four times a year.
- The Permanent Representatives Committee (transport working party) should be given clear directives within the framework of an overall approach and allowed greater freedom of negotiation.
- The period of office of the President of the Council of Transport Ministers (and of the other Councils) should be extended to a full year.
- Drafting should not be assigned to the transport working party of the Permanent Representatives Committee, but left to the Commission.
- The Council should not meet only when there are texts ready for signature but also, at the Commission's request, in order to take decisions laying down general guidelines.
- The Council should extend the infrastructure of its own secretariat in the transport sector to ensure that no bottlenecks develop.

- The Permanent Representatives work on transport policy should be performed more rapidly in several specialist groups (e.g. for (a) sea transport, (b) ports, (c) air transport, (d) transport taxes and infrastructure costs, (e) transport safety, etc.).
- After direct elections a separate Transport Committee should be set up again.
- The appropriate bodies of the parties, political groups and governments should ensure that a sufficient number of politicians versed in transport matters or, as appropriate, transport specialists are Members of the European Parliament and the Economic and Social Committee.
- The European Parliament should reserve the right to institute proceedings against the Council for failure to act in the transport sector (and possibly other sectors) on the basis of Article 175.

214. All these proposals have been derived and developed in particular from an observation of the Community's work on transport policy. They should, where necessary, be discussed in greater detail by the bodies of Parliament concerned with institutional questions. Some of the proposals would result in a considerable change in the day-to-day work of various of the Community's bodies and thus meet with resistance. Since, however, the Community has proved to be more or less incapable of action in the transport sector, or at least incapable of taking decisions on the most important questions, no one can expect proposals for improving the situation to be purely cosmetic.

215. The proposals made here do, however, have the advantage as regards implementation that they can all be put into practice on the basis of existing legislation and without amendments to the Treaty.

216. In the motion for a resolution contained in this report your committee suggests that some institutional proposals concerning transport should be adopted immediately and that the other proposals are initially meant only as background material for the Political Affairs Committee, the Legal Affairs Committee and the Committee on the Rules of Procedure and Petitions, which will doubtless in the near future draw up comprehensive reports dealing with these questions.

MOTION FOR A RESOLUTION (Doc. 202/76)

tabled by Mr Mursch, Mr Albers, Mr Delmotte, Mr Früh,
Mr Gerlach, Mr Giraud, Mr van der Gun, Mr Hamilton,
Mr Klepsch, Mr McDonald, Mr Knud Nielsen, Mr Noè, Mr Nyborg,
Mr Schwörer, Mr Seefeld and Mr Vandewiele
on action against the Council of the European Communities
because of the latter's failure to act on the common transport
policy

The European Parliament

Instructs its Committee on Regional Policy,
Regional Planning and Transport, its Political Affairs
Committee and its Legal Affairs Committee to take,
on behalf of the Parliament, the steps required to
bring an action before the Court of Justice under
Article 175 of the EEC Treaty, against the Council of
the European Communities, because of the latter's
failure to act in respect of the implementation of
Article 75 of the EEC Treaty concerning a common
transport policy

OPINION OF THE LEGAL AFFAIRS COMMITTEE

on a possible action brought by the European Parliament before the Court of Justice of the European Communities against the Council for its failure to act in respect of measures in the field of the common transport policy (see the motion for a resolution tabled by Mr Mursch and others (Doc.202/76))

Draftsman: Mr R. Riz

At its meeting of 20 and 21 September 1976 the Legal Affairs Committee appointed Mr Vernaschi draftsman of the opinion.

As Mr Vernaschi subsequently left the Legal Affairs Committee, a new draftsman, Mr Riz, was appointed by the committee at its meeting of 25 and 26 November.

At its meeting of 20 January 1977 the committee considered the draft opinion and adopted it by nine votes to one, with four abstentions.

Present: Sir Derek Walker-Smith, chairman; Mr Jozeau-Marigné, vice-chairman; Mr Riz, vice-chairman and draftsman of the opinion; Lord Ardwick, Mr Berkhouwer (deputizing for Mr Pianta), Mr Bouquerel, Mr Broeks, Mr De Keersmaecker, Mr Lautenschlager, Lord Murray of Gravesend, Mr Mursch (deputizing for Mr Poher), Mr Scelba, Mr Shaw and Mr Walkhoff.

I. INTRODUCTION

1. The Court of Justice of the European Communities would not be able to discharge fully the task laid upon it by the EEC Treaty of ensuring compliance with Community law if its powers were restricted to the review of the legality of the institutions' acts. By Article 175 of the Treaty it is also called upon to pronounce on instances of failure to act by the Council and the Commission. The Court is thus assigned virtually a function of stimulus, which is moderated by the fact that its judgments are merely declaratory: the Court confines itself to establishing the lack of action on the part of the institution at fault, leaving to the latter the choice of the necessary measures to comply with the judgment of the Court, according to Article 176 of the EEC Treaty.

2. By the provisions of Article 175, proceedings for failure to act by the Council or the Commission can be brought before the Court by:

- Community institutions or Member States (first and second paragraph of Article 175);

- Any natural or legal person (third paragraph of Article 175).

Whereas the institution of proceedings by natural or legal persons is governed by very strict conditions, neither the institutions nor the Member States are required to prove an interest in order to act: actions by them are, in fact, regarded as being brought in the interest of the development of Community law. This distinction is fundamental in the interpretation of existing jurisprudence on actions against failure to act: actually, no such proceedings have ever been brought by a Community institution or a Member State (first and second paragraphs of Article 175), but only by individuals (third paragraph of Article 175).

3. In fact, on 24 November 1975 the President of the European Parliament completed the preliminary stage to proceedings for failure to act against the Council by calling¹ upon it to act in connection with the proposal from the Commission for a Sixth Directive on the harmonization of the legislations of the Member States concerning turnover taxes. In his reply², the President of the Council stressed the difficulties of the problem, acknowledged its urgency and undertook to include it on the agenda of a forthcoming Council meeting. The enlarged Bureau of the European Parliament took note of the Council's reply and no proceedings were instituted.

¹ See annex to PE 43.221

² PE 43.278/BUR of 19 December 1975

Meanwhile the President of the European Parliament had asked the Legal Affairs Committee to examine certain problems relating to proceedings for failure to act; at its meeting of 19 October 1976 the Legal Affairs Committee adopted a draft opinion for the enlarged Bureau by Mr Jozeau-Marigné (see PE 44.639/fin.).

4. At the origin of the present consultation of the Legal Affairs Committee lies the motion for a resolution¹ tabled by Mr Mursch and others on an action against the Council of the European Communities because of the latter's failure to act on the common transport policy. Pursuant to the provisions of Rule 25 of Parliament's Rules of Procedure, this motion for a resolution was referred to the appropriate committees. It should be noted here that Parliament will not be voting on this motion for a resolution, but on one which will be included in the report from the Committee on Regional Policy, Regional Planning and Transport.

5. Our task here is to assess the possibility, the forms, and, insofar as we are competent, the advisability of Parliament's bringing proceedings against the Council for failure to act. The subject of our opinion must be clearly demarcated, on the one hand, from the work of the Committee on Regional Policy, Regional Planning and Transport and of the Political Affairs Committee and, on the other, from the content of Mr Jozeau-Marigné's opinion.

Nevertheless, in what follows, some of the arguments contained in Mr Jozeau-Marigné's opinion will be quoted and enlarged upon - principally because of the different publicity given to documents addressed to the enlarged Bureau and to those debated by Parliament in plenary sitting.

In any event, we could hardly disregard the conclusions which were unanimously adopted by the Legal Affairs Committee on 19 October 1976² and which must be taken as a starting point for our analysis.

II. OBSERVATIONS OF A LEGAL NATURE

A. Parliament's right to bring an action

6. The first paragraph of Article 175 states:

'Should the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established.'

¹ Doc. 202/76

² See PE 44.639/fin. point 26.

It should first be noted that the term 'other institutions' is intended to denote both the Council and the Commission but obviously excludes whichever of the two is bringing the action.

Parliament's right to bring an action unambiguously derives from the combined provisions of Article 175 and of Article 4 of the Treaty which enumerates the Community's institutions: the Assembly, the Council, the Commission and the Court of Justice. Apart from the Court of Justice, which could not bring an action against itself, the Community institutions entitled to bring an action for failure to act are, the Council, the Commission and the European Parliament.

No broad interpretation of Article 175 is therefore needed to assert the European Parliament's right to bring an action.

7. Nevertheless, in doctrinal debate, various arguments have been propounded to deny Parliament this right.

Some of these objections are based on the principle of the separation of powers which is observed more or less strictly in all the Member States.

Obviously, however, the separation of powers in the legal systems of the Member States cannot be such as to deny Parliament a measure of control over the activities of the executive (through votes of confidence, the tabling of questions, etc.).

Secondly, it has been argued that the European Parliament cannot bring an action before the Court of Justice on the analogy of the constitutional systems of the Member States, since these systems do not allow the parliamentary body to institute legal proceedings against the executive by reason of its actions or failure to act.

However, the Community's legal system contains some characteristics not found in the legal systems of the States. In fact, the European Parliament, which is a parliamentary institution in its composition and procedure, exercises powers of an advisory and consultative nature¹.

Since, in the Community system, the decision-making body is not accountable to Parliament, Community legislation has sought to compensate for this weakness in the system by securing for Parliament the right to bring an action against the Council for failure to act.

8. Another objection frequently advanced draws an analogy between proceedings for failure to act (Article 175) and proceedings for annulment (Article 173): from the fact that the European Parliament is not empowered to bring an action for the annulment of an act actually performed by the Council or the Commission, it is argued that it is also incapable of bringing proceedings for failure to act by one of these institutions.

¹ See PE 44.639/fin. point 10.

This objection appears equally unfounded. The European Parliament cannot take proceedings for the annulment of a Community measure, because, in its consultative function, it has taken part in the enactment of the measure. But the right of recourse against failure to act has been instituted as a legal remedy against inaction and its aim is to obtain a declaration by the Court that an institution should have acted and did not do so: clearly, it is therefore correct for Parliament to have been given the right to bring proceedings for failure to act.

9. In our opinion the evidence of the texts is irrefutable¹.

At all events, it seems beyond doubt that only the Court can finally resolve the issue by pronouncing on the admissibility of an action for failure to act brought by the European Parliament. This is why it is important that Parliament should bring such proceedings.

10. The European Parliament's right to bring an action having been established, the question arises whether it may bring such an action only to uphold its own rights or also to obtain a declaration of failure to act contrary to the Treaty in respect of any measure by the Council or the Commission. Referring to what has already been stated above (see point 2) on the difference between proceedings brought by an individual (paragraph 3 of Article 175) who must prove an interest to bring the action, and proceedings brought by institutions or Member States, it must be emphasized that any action brought by the European Parliament would be in the interest of the law²; the object of the proceedings brought by Parliament would in no way be different from that of proceedings brought by another institution or by a Member State.

B. The 'call to act'; procedural considerations

11. The preliminary stage to the proceedings proper begins with the call to act (Article 175, second paragraph), which is essentially a formal summons by the institution intending to bring proceedings against the institution which, in the former's opinion, has failed to act. As can be seen from the second paragraph of Article 19 of the Statute of the Court of Justice of

¹ The text of Article 175 is perfectly clear; however, a comparison should also be made between the wording of this text and that of Article 173 (proceedings for annulment), which does not provide for an action to be brought by the European Parliament

² See PE 44.639/fin. point 6.

Economic Community¹, this is a necessary condition for the subsequent bringing of a legal action.

In the case of the European Parliament, the question must be settled which of its organs may properly issue a call to act to the Council in respect of the latter's failure to act in the field of common transport policy. Whereas, on the one hand, by Rule 53 of the Rules of Procedure, Parliament is represented by its President in legal matters², consideration must, on the other hand, be given to the nature of a call to act as the expression of a resolve initiating a train of events which may lead to the bringing of proceedings for failure to act. The Legal Affairs Committee is of the opinion that an act of such political importance would have to be an expression of Parliament's will in plenary sitting. Since the normal mode of expression of Parliament's will is the resolution, we must conclude that the call to act would have to be contained in the motion for a resolution included in the report by the Committee on Regional Policy, Regional Planning and Transport and voted by Parliament. This would eliminate a possible cause of inadmissibility on grounds of infringement of an essential procedural requirement³.

12. The subject of the call to act should be formulated with great care and precision, since the Court of Justice has ruled inadmissible an action which puts forward a new claim and is based on a different legal ground⁴.

13. We have also considered the question of whether there may be a time limit on issuing the call to act: can proceedings still be instituted if the infringement of the Treaty has existed for some time?

It is true that the Court has extended the principle of 'a reasonable time limit'⁵, which it regularly applies in proceedings for annulment, to a few cases of failure to act brought by private individuals. It must, however, be assumed that in an action brought by the European Parliament

¹ The second paragraph of Article 19 of the Statute of the Court of Justice of the European Community states:
'The application shall be accompanied, where appropriate, by the measure the annulment of which is sought or, in the circumstances referred to in Article 175 of this Treaty, by documentary evidence of the date on which an institution was, in accordance with that Article, requested to act. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in that event the rights of the party shall not lapse even if such documents are produced after the time limit for bringing proceedings.'

² Rule 53 of the Rules of Procedure of the European Parliament states:
'Parliament shall be represented in international relations, on ceremonial occasions, and in administrative, legal or financial matters by the President, who may delegate his powers'

³ See PE 44.639/fin, point 19

⁴ Joined Cases 41 and 50/59, (1960) ECR (to be published)
(Cause riunite 41 e 50/59, Raccolta della Corte, Vol. VI, p.985)

⁵ See PE 44.639/fin, point 19(i)

against the Council for its failure to issue rules for the common transport policy, the Court will not apply this principle, giving preference to the consideration of general interest in the development of Community law.

Besides, it would not seem that injunctions such as those contained in Article 75 could be considered as having lapsed.

14. Another question raised in Mr Jozeau-Marigné's opinion for the enlarged Bureau is that of the possible renewal of the call to act¹. The Legal Affairs Committee agrees with Mr Jozeau-Marigné's conclusion that particularly in deference to the principle of legal certainty, it is doubtful whether the Court will admit that a repetition of the call to act extends the time limit laid down in the second paragraph of Article 175.

C. The subject of proceedings : criteria

15. Acts in respect of which an institution can be charged with unlawful failure to act must meet certain criteria.

In the first place, these must be clear and definite acts. The Council could not be, for instance, requested to act to implement the common transport policy as a whole; the legal provisions whose adoption is required must be specified.

Secondly, the obligation under the Treaty to effect the act in question must be unconditional.

Moreover, for the execution of the Treaty provision from which the obligation to act derives, there must be required further implementing measures to be put into effect by the Community institution whose failure to act is contested; were it otherwise, the provision of the Treaty on which the action is based would be one having direct effect². In that case, it would create, in respect of individuals, rights which would be upheld by national courts; the importance of an action for failure to act aiming to elicit Community norms would thus be considerably reduced. It would not seem, however, that the argument of the direct effect of Article 75 of the EEC Treaty could be seriously maintained.

¹ Point 19(ii)

² Direct effect attaches to the provisions of regulations (see Article 189 of the EEC Treaty) and, according to the Court's jurisprudence, the provisions of the Treaty and also those of directives or decisions which:

- are of a clear and unequivocal nature;
- are subject to no conditions;
- require no further implementing measures either on the part of a Member State or of a Community institution;
- involve no discretionary powers in their implementation.

16. In this connection the question arises whether the obligation upon the Council to enact a particular measure need necessarily derive from Treaty provisions, or whether it may also arise from a binding measure adopted on the basis of the Treaty (for instance, a regulation in which the Council may undertake to adopt certain measures within a certain time). On a literal interpretation of the expression 'in infringement of this Treaty', contained in the first paragraph of Article 175, the second hypothesis would seem to be excluded.

Nevertheless, attention should be drawn to the analogy with the first paragraph of Article 169, which states:

'If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations'.

The Court of Justice has always applied a broad interpretation to this Article, including in the concept of 'this Treaty' measures taken in accordance with the Treaty. The Legal Affairs Committee is therefore of the opinion that the Court would rule admissible an action brought on the basis of a provision of secondary legislation.

However, in view of the uncertainty on this point, and of the nature of certain obligations imposed upon the Council by Article 75 (see footnote to point 24), the Committee on Regional Policy, Regional Planning and Transport should be recommended to base any proposed call to act which it may include in its motion for a resolution mainly on obligations deriving directly from the Treaty.

D. The 'definition of position'

17. The second paragraph of Article 175 lays down certain conditions as to the admissibility of actions for failure to act:

'The action shall be admissible only if the institution concerned has first been called upon to act. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months'.

By arguing 'a contrario' from the wording of the article, it can be deduced that a 'definition of position' by the institution called upon to act precludes proceedings for failure to act. We must therefore now consider the 'definition of position' in greater detail.

18. In a number of cases brought by private individuals, the Court has had to deal with the concept of the definition of position. In particular, in Case 48/65¹ the Court held that a simple statement of position contained in a letter made the action inadmissible. The Advocate-General in his opinion² did not think it was necessary to answer the question whether 'a reply which constitutes a refusal to act as requested defines (the institution's) positions', and recommended that the Court reject the plaintiff's suit on other grounds.

In other judgments³, in cases brought, be it noted, on the basis of the ECSC Treaty, whose provisions on recourse against failure to act are different from those of the EEC Treaty⁴, the Court held that an action cannot be made inadmissible by a reply in which the institution concerned merely communicates its intention of examining the problem at issue.

19. Here attention should be drawn to the fundamental distinction (see point 2 above) existing between proceedings instituted by private individuals and those brought by an institution or a Member State. Since no proceedings of the second type have ever been brought before the Court, we cannot know with certainty what would be its interpretation of the concept of 'definition of position' in the case of a possible action brought by the European Parliament. However, - and the doctrine is unanimous on this point - Article 175 would be voided of all useful effect if any reply whatever from the institution requested to act were to be regarded as a 'definition of position'.

But this is a problem which should be dealt with at a later stage, when the 'definition of position' by the Council comes to be considered.

¹ (1966) ECR p.19 et seq.

² (1966) ECR p.32

³ See Joined Cases 42 and 49/59 (1961) ECR to be published
(Causa riunite 42 e 49/59. Raccolta della Corte, Vol. VII p. 97 et seq.)
Case 42/58 ECR to be published
(Causa 42/58, Raccolta della Corte, Vol. V, p.377)

⁴ Article 35 of the ECSC Treaty states:

'Wherever the High Authority is required by this Treaty, or by rules laid down for the implementation thereof, to take a decision or make a recommendation and fails to fulfil this obligation, it shall be for the States, the Council, undertakings or associations, as the case may be, to raise the matter with the High Authority.

The same shall apply if the High Authority, where empowered by this Treaty, or by rules laid down for the implementation thereof, to take a decision or make a recommendation, abstains from doing so and such abstention constitutes a misuse of powers.

If at the end of two months, the High Authority has not taken any decision or made any recommendation, proceedings may be instituted before the Court within one month against the implied decision of refusal which is to be inferred from the silence of the High Authority of the matter.'

E. Time limits: a procedural proposal

20. It follows from Article 175 that if Parliament should decide to bring an action before the Court against the Council for failure to act, it should first, in a resolution (see point 11), call upon the Council to act; from the day following the receipt by the Council of the call to act¹ begins the two-month period at the end of which, if the Council has not defined its position, Parliament can, within a further period of two months, start proceedings for failure to act; it is reasonable to assume that the reply from the Council will terminate the first period and open the second.

If, following the call to act, the Council should fail to define its position, or if it should carry out the measures which are the subject of the action, no particular problems would arise: these two extreme cases, however, seem unlikely to occur. What is more likely is that the Council will reply to the call to act, pointing, for instance, to the difficulties it is encountering in putting the measures requested by Parliament into effect. The content of such a reply should be considered and assessed by the European Parliament which will then be able to decide whether to start proceedings for failure to act. Given the political importance of bringing such an action, the decision can only be taken by Parliament in plenary sitting: for the reasons adduced in point 11 we must consider that Parliament, in voting on the motion for a resolution contained in the report from the Committee on Regional Policy, Regional Planning and Transport, must not instruct its President to take all the further requisite measures, thereby delegating wide discretion on such an extremely important decision to one of its internal organs.

21. Consequently, there arises the problem of the observance of the obligatory two month time-limit laid down in the second paragraph of Article 175. In the ordinary way, what should happen is that the European Parliament, on the basis of a report from the Committee on Regional Policy, Regional Planning and Transport, which should have consulted the two committees asked for their opinion, should adopt a resolution. But recourse to this procedure would be extremely risky because any delay would result in the time-limit² elapsing and the impossibility of bringing the action. On the other hand, it is hardly necessary to point out that none of the shortened procedures for which our own Rules of Procedure provide could be used for arriving at a decision of such importance as the one in question.

¹ Article 80(1) of the Rules of Procedure of the Court of Justice

² which, as noted above (see point 14) cannot be extended.

22. The difficulty might conceivably be overcome if only the Committee on Regional Policy, Regional Planning and Transport (or generally speaking the committee responsible) were consulted on the Council's definition of position. However, such a procedure is not felt to be satisfactory because the Council's definition of position could also relate, or relate solely, to matters of a legal and political nature, on which the Committee on Regional Policy, Regional Planning and Transport would not be competent to deliver an opinion.

23. Perhaps the best way of ensuring both speed of proceedings and collegiality of the decision would be to set up a special committee (Rule 37 of the Rules of Procedure of the European Parliament) to examine the Council's reply on the basis of the existing documentary evidence and to submit a report to Parliament in plenary sitting. This special committee could be composed in equal numbers of members of the Committee on Regional Policy, Regional Planning and Transport, the Legal Affairs Committee and the Political Affairs Committee. Its chairman could be the President of the Parliament, since it is he who, if it was decided to start an action for failure to act, would have to represent Parliament before the Court (Rule 53 of the Parliament's Rules of Procedure): it is undoubtedly important that the President should be involved from the start in decisions to be taken as to the possibility of bringing the proceedings.

The proposal to establish the special committee would have to be contained in the motion for a resolution from the Committee on Regional Policy, Regional Planning and Transport and the decision would thus be taken by the European Parliament simultaneously with that on the issuing of the call to act. The special committee would meet immediately after the receipt of the Council's 'definition of position' and would be dissolved once Parliament had voted on the motion for a resolution contained in its report, or at the expiry of the period of two months after which proceedings for failure to act could no longer be brought.

F. Problems relating to Article 75

24. Some general observations on Article 75 are called for at this point.

First, by paragraph 2 of this Article the Council is required to lay down, before the end of the transitional period, the provisions referred to in points (a) and (b) of paragraph 1 of the Article¹; the aim of these provisions is to ensure freedom to provide services in the field of transport, to which the provisions of Articles 59 to 66 of the Treaty do not apply because of the express derogation contained in Article 61(1).

¹ Plainly, this clause is of a prescriptive nature: it imposes a precise obligation to achieve a certain result within a mandatory time-limit

25. The phrase 'taking into account the distinctive features of transport' contained in Article 75(1), cannot, because of its vagueness, justify the Council's inaction.

The applicability of points (a) and (b) of Article 75(1) is limited to transport by rail, road and inland waterway (Article 84(1)). The effects of other limitations, material and territorial, on the applicability of Article 75(1) and (2) should also be borne in mind: see, for instance, the provisions of Article 78¹ and Article 82² of the Treaty.

26. The Legal Affairs Committee is of the opinion nevertheless, that it is for the committee responsible to specify the exact Commission proposals based on Article 75, which the Council's failure to adopt is alleged to infringe the Treaty.

III. CONCLUSIONS

27. The Legal Affairs Committee reaffirms³ its opinion that the European Parliament has the right to take recourse before the Court of Justice against a failure to act by the Council which it considers contrary to the Treaty: such proceedings would be instituted in the interest of the development of Community law, and to bring them Parliament need not prove its own legitimate interest to act (see points 6 to 10 above).

The judgment of the Court would be of a declaratory nature (see point 1). If the judgment were to establish the Council's unlawful failure to act, this would lay upon the Council an obligation 'to take the necessary measures to comply with the judgment of the Court of Justice' (Article 176 of the Treaty).

28. The issuing of the call to act to the Council, which is the preliminary stage to proceedings for failure to act, should, in the opinion of the Legal Affairs Committee, be made by Parliament in plenary sitting, at the time of voting the motion for a resolution contained in the report from the Committee on Regional Policy, Regional Planning and Transport; the request for action should specify all those matters which are to constitute the subject of any future proceedings for failure to act (see points 11 to 14 above).

¹ Article 78 of the EEC Treaty states:

'Any measures taken within the framework of this Treaty in respect of transport rates and conditions shall take account of the economic circumstances of carriers.'

² Article 82 of the EEC Treaty states:

'The provisions of this Title shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division.'

³ See PE 44.639/fin.

29. The measure in respect of which the Council is requested to act should be of a clear, precise and unconditional nature; the Treaty provision from which the Council's obligation to act derives should be one not having direct effect.

The Legal Affairs Committee recommends that the Committee on Regional Policy, Regional Planning and Transport base any call to act which it might include in its motion for a resolution mainly on obligations deriving directly from Article 75 (see points 15 and 16).

30. Parliament's decision on its attitude to the 'definition of position' by the Council should be taken in plenary sitting. To ensure this, and also that the two-month time limit laid down in the second paragraph of Article 175 is observed, the Legal Affairs Committee suggests that the Committee on Regional Policy, Regional Planning and Transport should include in its motion for a resolution a proposal for the possible setting up of a special committee with the task of submitting to Parliament a report within an appropriate time.

31. The object of the call to act and of any subsequent proceedings for failure to act should be determined by the committee responsible.

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32. In conclusion, the Legal Affairs Committee stresses the great importance which acceptance by the Court of Justice of an action brought by the European Parliament against the Council for failure to act would have from an institutional point of view. Under existing procedure, Parliament exercises effective control only over the Commission. This defect in the institutional balance could be remedied by the action in question, as Parliament would thereby acquire the power of control, albeit indirectly and incompletely, over the Council in cases where it failed to act.

IV. MINORITY OPINION

33. Some members were against the draft opinion, contesting Parliament's right to bring an action for failure to act, and denying that the requirements for instituting such an action had been met and that it was politically desirable.

34. Other members did not see the need to set up a special committee, jointly composed of members of the Committee on Regional Policy, Regional Planning and Transport, the Political Affairs Committee and the Legal Affairs Committee, to examine the Council's definition of position. This task, they felt, should be carried out by the Legal Affairs Committee alone.

