

European Communities

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Document 1-996/81

## Report

drawn up on behalf of the Committee on Transport  
on the common transport policy

Rapporteur : Mr A. Carossino

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PE 68.325/fin.



On 5 November 1979 Mr Baudis tabled a motion for resolution on transport policy (Doc. 1-462/79), which was on the same day referred to the Committee on Transport.

On 1 February 1980 the Committee on Transport appointed Mr Carossino rapporteur.

On 29 October 1981 Mr Hoffmann and others tabled a motion for resolution (Doc. 1-672/81) on which a report has been drawn up.

The subject of the report was considered on 15 October 1980, 25 September, 27 October and 3 December 1981. On 29 January 1982 the motion for a resolution was adopted with one vote against and two abstentions.

Took part in the vote: Mr Seefeld, chairman; Mr Carossino, vice-chairman and rapporteur; Mr Albers, Mrs von Alemann, Mr Baudis, Mr Bonaccini (deputizing for Mr Cardia), Mr Cottrell, Mr Gabert, Mr Gendebien (deputizing for Mr Skovmand), Lord Harmar-Nicholls, Mr Janassen van Raay (deputizing for Mr Hoffmann), Mr Key, Mr Klinkenborg, Mr Martin, Mr Moorhouse and Mr Nikolaou (deputizing for Mr Ripa di Meana)

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A.

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

MOTION FOR A RESOLUTION

on the common transport policy

The European Parliament

- having regard to the motion for a resolution tabled by Mr Baudis (Doc. 1-462/79),
  - referring to Mr Seefeld's report on 'the present state and progress of the common transport policy' (Doc. 512/78) and to the opinion of the Legal Affairs Committee annexed thereto,
  - mindful of the scant progress made in the area of the common transport policy,
  - having regard to the report drawn up by Mr Carossino on behalf of the Committee on Transport (Doc. 1-996/81),
1. Reaffirms yet again that a common transport policy should constitute one of the foundations of the European Communities;
  2. Deplores the fact that Articles 74-84 of the EEC Treaty have still not been fully implemented;
  3. Insists on the danger inherent in the fact that the lack of a common transport policy must inevitably result in obstructing further advances in building the Community, and in the long run will even jeopardize the achievements already attained;
  4. Urges the council to take without delay positive decisions on the many important Commission proposals which have received a favourable parliamentary opinion;
  5. Invites the Commission to implement the common transport policy provided for under Title 4 of the EEC Treaty and, with this aim in view, requests the Commission to take action by the end of 1982 to revise, complete and extend until 1984 the programme for priority action in all branches of the transport sector presented in October 1980 for the period 1981-1983, and to submit to the Council the relevant formal proposals at the appropriate time;
  6. Calls upon the Commission, in drawing up this programme, to take account of the different circumstances prevailing in the ten Member States, but also to make every effort to do whatever is necessary to develop the Community, maintain the Common Market and fulfil the principles set out in Article 75(3) of the Treaty establishing the EEC;
  7. Calls on the Commission to include in the draft Community budget the necessary appropriations for the measures contained in this programme;

8. Requests the Council to forego the systematic use of the principle of unanimity, except for decisions in those cases for which Article 75(3) specifically provides; further requests the Council, whenever it intends exceptionally to restore this procedure, to state its reasons in advance when consulting Parliament;
9. Invites the Council to define without further delay the framework for a common transport policy as provided for under Article 74, and the transport system referred to in Article 75(3), and to take a decision on the Commission proposals upon which Parliament has already delivered an opinion;
10. Instructs its Committee on Transport to follow progress on transport policy and keep the actions of the Commission and the Council under review; decides to prepare to open the procedure for infringement against the Council as laid down in Article 175 of the Treaty for the reasons stated in the motion for resolution<sup>1</sup> tabled by Mr Hoffmann;
11. Instructs its President to forward this resolution and the report on which it is based to the Council and the Commission and, for information, to the Court of Justice of the European Communities.

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<sup>1</sup> Doc. 1-672/81



EXPLANATORY STATEMENT

1. A very large majority of members of the European Parliament's Committee on Transport, who represent all the political groups, are thoroughly dissatisfied with the present state of the European Community's common transport policy.
2. Indeed, the Committee on Transport is not prepared to admit that a common transport policy exists at this time.
3. Community legislation in the matter so far has been a disjointed and unsystematic jumble of isolated measures, and in no way can it be claimed that the transport sector operates within the framework of a common transport policy.
4. Studies by the Committee on Transport reveal that the Council of Transport Ministers has so far predominantly functioned as an instrument used by the Member States to defend their own traditional transport systems against the Commission's proposals and aims and that the most they will reluctantly accept within that body are such measures as cannot be avoided and will require the minimum of adjustment in the national legislations.
5. The Council is not fulfilling the duty imposed on it by the Treaties which, in the words of Article 3(e) of the EEC Treaty is 'the adoption of a common policy in the sphere of transport'. The Council should be reminded by the European Parliament of this obligation.
6. As for the Commission, after more than two decades of largely fruitless efforts, it has resigned itself to a policy of 'small steps', which - euphemistic labels such as 'pragmatism' or 'realism' notwithstanding - merely consists in submitting to the Council only those proposals which are felt in advance to have some prospect of acceptance. It follows from this that the Commission does not oblige the Council to face up fully to its responsibilities. The consequences of such a policy are particularly grave for Parliament, since it seriously undermines its function of control vis-à-vis the Council: in the absence of proposals emanating from the Commission, Parliament cannot call the Council to account for rejecting any such proposals.
7. In the present report the Committee on Transport proposes to put forward some suggestions for resolving this deadlock.

8. Ever since the Community was created in 1958, in fact since 1957, the representatives of the peoples of Europe have repeatedly stressed the importance of this sector of European policy and called for legislation that would be really systematic.
9. The basic reports on the subject which have been tabled in the European Parliament are by no means outdated even today, and your rapporteur will be making express reference to the following among them:
- the 1957 Kapteyn report, Doc. 6/1957-58  
(adopted by what was then the Common Assembly of the ECSC)
  - the 1961 Kapteyn report, Doc. 106/1961-62
  - the 1961 Müller-Hermann report, Doc. 18/1962-63
  - the 1974 Mursch report, Doc. 215/74
  - the 1979 Seefeld report, Doc. 512/78.
10. In calling the reader's attention to these documents your rapporteur will seek to avoid repetition of what is contained in them and will confine himself to quoting only as much as is necessary to make clear that Parliament, now emerged from direct elections, maintains in its present composition the views of its predecessors.
- (a) There is surely a profound significance in the fact that whereas the elected representatives of the peoples of the European Community insistently demand a common transport policy, as expressly envisaged in the Treaties, the Commissioners in charge proceed with extreme caution, while in the Council of Ministers serious political differences have so far prevented any substantial agreement on the main lines of a transport policy.
- (b) In the face of these delays and defaults by the Commission and Council in the performance of their functions, the European Parliament - without in any way seeking to arrogate these to itself - has the right and the duty, in fulfilling its proper role of stimulant and proponent, to take the initiative towards resolving what has become an intolerable situation.
- (c) Its resolve to do so has been strengthened by economic developments in the Community which make it even more urgent to adopt a common transport policy comprehending all the means of transport.

11. The first three sections of the present report will therefore stress clearly once again the vital role played by transport.

I. The importance of transport in modern industrial society

12. One of the factors constituting the particular strength of the European continent is its highly efficient and densely reticulated transport system. But, beyond this, the future of Europe in economic terms will depend on its ability to maintain this transport system permanently at the highest level of efficiency and rationalization.

13. We should bear in mind that the transport sector differs in one important particular from other economic sectors: in industry, all the factors of production can be imported - raw materials, energy, machinery, labour, technology; even in agriculture, all the factors of production, with the obvious exception of land itself, can be imported; and if the land is insufficient, it is always possible to bring all the agricultural produce from outside. In the transport sector, on the other hand, there is little that can be imported from outside. A modern industrial state needs its own transport system to be able to function.

14. Transport, in its double aspect, i.e. as an industry (producing means of transport that create new demand) and as a service (providing a link between producers and consumers) represents an essential department of the overall economic process.

A modern transport policy, therefore, must first of all be integrated within the overall economic context and must, moreover, be based on principles which apply to every mode of transport.

1. The importance of the transport sector in quantitative terms

15. In quantitative terms alone<sup>1</sup> the need for a European transport policy is abundantly clear.
16. In 1979 the percentage of the active population employed in the transport sector in the Member States of the Community of the Nine amounted to between 5.5% and 7.7%, or 6.2% for the Community as a whole. It can thus be estimated that of the 260 million or so inhabitants of the Community of the Nine, some 16.6 million directly depend on the transport sector for their livelihood.
17. The transport sector accounts for between 5.1% and 9% of the GNP (at market prices):

France	5.1	Ireland	6.9
Luxembourg	5.2	Greece	7.1
Italy	5.5	Belgium	7.5
Federal Republic of Germany	5.8	United Kingdom	8.2
Netherlands	6.8	Denmark	8.3

These figures, which are for 1975, are similar to those for 1979.

18. In external trade, for the Community of the Nine in 1977 the transport sector accounted for equal shares of revenue and expenditure, 6.5% and 6.2% respectively and, in 1979, 6.2% and 5.5%. These overall figures conceal, however, very considerable differences from country to country, as the following table, based on data for 1977 shows:

Country	Revenue from transport services as % of overall revenue from exports of goods and services		Expenditure on transport services as % of overall expenditure on goods and services	
	1977	1979	1977	1979
Federal Republic of Germany	4.1	4.2	4.8	2.7
France	6.9	5.8	7.1	6.1
Italy	5.0	4.7	6.4	6.3
Netherlands	8.0	9.9	4.4	7.4
Belgium/Luxembourg	5.7	5.4	5.1	4.7
United Kingdom	9.8	8.9	9.6	8.4
Ireland	5.0	-	1.8	-
Denmark	11.9	11.4	7.5	7.5
Greece	13.6	10.1	5.3	4.8

<sup>1</sup> Unless otherwise stated, data appearing in the remainder of the text have been drawn from Statistical Yearbook - Transport, Communications, Tourism, Luxembourg 1981

19. In 1979 the revenues of Community countries of the Nine from the export of transport services amounted overall to 35,212 million EUA and expenditure on the importation of transport services to 30,919 million EUA. Greece's revenues in 1979 were 566 million and expenditure 415 million EUA.

2. The transport system as a condition of improved productivity

20. The purely quantitative description in the preceding section gives an incomplete view of the importance of the transport system for our general economy and indeed for our lives in a modern industrial society. As pointed out earlier, transport is a system on which other systems depend.
21. On the efficiency of the transport sector depends the degree of specialization and of industrial division of labour which a modern economy can attain. It is the efficiency of the transport sector which determines whether a country can make the best possible use of its mineral and all other natural resources. On the degree of efficiency of the transport sector depends the nature and quantity of what the country can export.
22. By whatever means Europe succeeds in maintaining its position in a world where competition is growing, its success will depend on the efficiency of its transport economies and on the density of its communications network.
23. Whether the European Community will be able to contribute to the maintenance of Europe's role as a first-class economic power, to preserving our competitiveness on the world markets, and to the maintenance of our living standards, will depend in no small measure on its ability to create a rational transport system unhampered by obstacles at the national frontiers intersecting our continent. Only if the transport system is freed of all the obstacles at the frontiers and unhindered by the many difficulties and distortions stemming from divergences in the Member States' legislations and policies, can we have a large Common Market, and only then will its operation be satisfactory.

### 3. The energy factor

24. In the midst of the present energy crisis it would be a serious error to overlook the importance of the transport sector in the sphere of energy policy.
25. Out of the 750.7 million toe used up by the Community of the Nine in energy consumption in 1977, 18.0% went to the transport sector. In 1979 the percentage was 18.1% of 812 million toe. There is certainly no evidence of a downward trend. Such a substantial share of the total has naturally led to appeals from several quarters for energy saving in transport. The European Parliament's Committee on Transport itself took initiatives to this effect. But in view of the totally conflicting views being expressed as to the possibility of energy saving in this sector, and of the lively debate on the relative energy requirements of different modes of transport, the committee decided first of all to hold a hearing on the subject, the results of which have been presented by Mr Albers in an exhaustive report<sup>1</sup>.
26. It can nevertheless be said already at this point that transport of every type involves considerable energy consumption and that, unfortunately, ways of saving energy conflict with other aims. For instance, engines which are less noisy and emit fewer noxious exhausts, consume more fuel, so that noise abatement and efforts to prevent atmospheric pollution conflict to some extent with the desire to save energy.
27. One of the results of the hearing of experts is of especial importance for the purposes of the present report: it is that any energy savings that can be obtained by technical improvement of existing means of transport and even from new technologies, are insignificant compared with the substantial savings that would derive from improved organization of the transport sector and the regulation of traffic flow. Thus, improvements to a motor can produce an energy saving of perhaps 10-15%; but if an empty run can be avoided, the saving is 100%.
28. Increased energy costs, therefore, raise the issue not only of technology, but also, and perhaps to a greater extent, of transport policy.
29. The Community and each individual European country will have to persuade users to save energy primarily by obliging those who consume energy to pay its full price.
30. In addition to this, however, the European Community has another and specific task to perform: it is to make a serious contribution to energy saving by speeding up the establishment of free movement across frontiers and preventing delays at crossing point, and by improving the organization of transport so as to eliminate unnecessary journeys and empty runs.

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<sup>1</sup> Report drawn up on behalf of the Committee on Transport on ways and means of effecting energy savings in the transport sector (Doc. 1-249/81 - rapporteur: Mr W. Albers). See OJ C 287 of 9.11.1981 for the resolution adopted by Parliament on the basis of this report.

#### 4. Transport and the economic crisis

31. The current economic crisis can be described in various terms. It is experienced as inflation, as sluggish investments, as rising costs, as reduced competitiveness, as monetary instability - all factors which in recent years have contributed to the slowing down of the process of economic growth.

In a Community perspective we also have to consider the deeper causes of the current crisis in Europe, which lie in the incompatibility of Member States' policies with the aims of harmonization and convergence of the economies, as laid down in the Treaties. It is this that has prevented a real Community coming into being. And the consequences are serious, because today Community Europe is finding great difficulty in working out a joint position on important decisions which used to be made in the face of changes occurring in the market and in the world economy.

Difficulties in adapting productive structures are increasing, as illustrated by what is happening in the steel industry, in textiles, in shipbuilding etc.; the countries are moving apart, regional imbalances are becoming more acute.

32. Unemployment has reached absolutely unacceptable levels; all that prevents a total economic crash is that, unlike during the crisis of the 1930s, those out of work, thanks to unemployment benefits, are able, to some extent at least, to continue buying goods. If the slump appears less serious than in the thirties, it is nevertheless proving much harder to reverse the trend, since all the short-term measures which have been tried so far conflict with anti-inflationary policies.
33. In a crisis situation affecting important Community industries, and in the face of all the efforts that undertakings and governments have to make to effect structural adjustments to deal with the crisis, the Community cannot confine its role to that of umpire in the free-competition game, but must set itself the task of generating a genuine policy of industrial cooperation, so that sporadic and often conflicting measures introduced by individual States do not jeopardize the prospects of growth for the Community economy as a whole. Against this background the key role that a common transport policy can play in determining the prospects of the Community's economic integration becomes abundantly clear.
34. In transport, since 1975, there has been a considerable reduction of the volume of traffic, but mainly on rail and waterway, i.e. in the heavy freight sector. Road and air transport have been much less affected by the recession. The effects of the rise in petrol prices on road transport have also been much less severe than might have been expected. This explains why, despite the oil crisis, there has been no diversion of traffic to rail and waterway.

35. If the Governments of the Member States and of the Community were to take active steps to combat unemployment and the general economic recession, the transport sector would be likely to occupy a priority place in any list of investments that could in the long-term help overcome the present-day reluctance to invest which is the fundamental reason behind the current crisis.

II. The importance of transport policy for the operation of the Common Market

36. The previous section dealt with the general importance of the transport sector. To bring out its importance for the functioning of the Common Market, we must add some further considerations, since there are still many people who have not understood that a common transport policy is a necessary pre-requisite for the existence of a common market.

1. Free movement of transport across frontiers

37. The purpose of a common market is to improve the standard of living in the individual countries, each of which had previously constituted a separate market, protected to a greater or lesser extent from other such markets. This aim can be achieved by rationalizing the entire economy and by switching to mass production for a larger market.

38. Everyone has been persuaded by now that to achieve this end, there must be free movement of goods and factors of production across the frontiers of the Common Market member countries, and it is also generally accepted that, if there is to be free movement, duties and quantitative restrictions on trade must be abolished. Neither is it contested that labour and capital must be able to move freely across frontiers, nor is there any opposition to the freedom of establishment. Why, then, do so few people understand that free movement of transport across frontiers is of a particular importance? Why do we see such opposition from many quarters to a common policy on transport, or, to put it another way, why is there so little understanding of the need for it? In one of the first reports prepared by the European Parliament it was rightly observed that restrictions in the transport sector are more harmful than customs duties. A customs duty merely places a restraint on trade. On the other hand a ban on traffic, the lack of a communications link across a frontier, the refusal of a transport licence obstruct trade completely.



39. Establishment of free movement of transport across frontiers is thus a necessary pre-requisite for the existence of the Common Market.
40. To avoid misunderstandings, it should be made clear that what is envisaged here is obviously not total freedom of international movement of transport, which would exist if internal transport regulations were not applicable to international traffic. However, regulation of international transport should not be more restrictive than that for internal traffic. A paradigm has been coined in Community circles to describe this situation: 'throughout the Community territory conditions similar to those in an internal market should obtain'.

## 2. Equitable charging of transport costs to users

41. Another aspect of which those who fail to grasp the importance of a transport policy for the Common Market seem to be unaware is that of the charging of transport costs to users. This is a problem entirely unrelated to that of international traffic. Transport costs are an important factor of overall costs for all industrial and agricultural undertakings, as well as for many firms which provide services. Transport costs are to a very large extent determined by the transport policies of the Member States. If, for instance, railways are heavily subsidized in one country, but not in another, this means in effect that the first country is subsidizing the second country's industries - a situation hardly compatible with the principles of the Common Market, since it distorts competition.
42. The existence of such interdependence requires that, in the interests of the Common Market, those cost factors which may not be directly related to international traffic should be harmonized as well. It may well happen that those affected by a particular measure cannot understand why Brussels wants them to change their well-established habits. The reaction then is: 'Brussels is harmonizing for the fun of it!' and accusations of 'centralism' and 'Eurocratic rule' are flung about. Why should lorries in Sicily, which never leave the island and will thus never come to Brussels, be equipped with a tachograph and conform to rules on working hours issued from Brussels? Simply because working hours are translated into labour costs and, through transport costs, become a cost factor for industry and for agriculture; also because industry and agriculture in every area of the Community should be part of the same Common Market. We cannot have the benefits of the Common Market without also assuming the burden of its rules.

43. It is understandable that countries which do not border other Community countries and are not as closely interlinked by road and waterway transport as are the countries of the Benelux, the Federal Republic of Germany and France, find it difficult to understand the necessity for harmonizing legislation on transport. For Denmark and Italy (at any rate northern Italy) links with the above-named countries are still closer than for Ireland and the United Kingdom. The problem will be of especial relevance to Greece. There, too, it will be asked why rules and regulations which apply 2,000 kilometers away should be adopted. Efforts will perhaps be made to restrict such rules and regulations to international traffic to other Community countries.
44. But that would be to misconceive the nature of the Common Market and to see only one aspect of transport policy: a European common transport policy does not merely mean eliminating impediments to international traffic and establishing fair conditions of competition for undertakings active in the field of international transport. It also means accomplishing an equally important task, one that is, in fact, essential of harmonization of legislations on transport in order to eliminate discriminatory charging of transport costs to industry and agriculture (and, of course, to all services which include a transport element).
45. Introduction of free movement and harmonization should proceed hand in hand in parallel stages. The Commission should see to it that a certain amount of balance is maintained between these two series of measures. It is not a question of 'first this' (freeing transport movement), 'then the other' (harmonization of legislation). The 'two-speed' policy has not been promoting the process of integration because it has provided arguments and pretexts to all those who, for a variety of reasons, do not want to see the Community Treaties put into effect.
46. This is a crucial problem, because the fact that balanced progress has not been maintained has aroused understandable worries among the representatives of the Governments and the industries of the countries with weaker economies, that if liberalization alone is pursued, the result might be to favour the stronger economies and to perpetuate and exacerbate the existing disequilibria.

47. The Committee on Transport therefore demands that the harmonization measures which are necessarily required for freedom of movement be applied without delay. It nonetheless wishes to emphasize unequivocally that harmonization must never be an end in itself. Intervention for the purposes of harmonization is justified only if undertaken to approximate the conditions of competition and to facilitate freedom of movement.

48. The above summary description serves to illustrate the problems and conflicts, the veritable blind alley into which the Community has gradually driven itself by failing to implement a coherent transport policy.

49. Indeed, the Commission itself in its Communication to the Council on the development of transport policy has stressed the need for some kind of parallel progress between monetary unification, on the one hand, and the convergence of economic policies and of regional, structural and social measures on the other. It has warned that, at all events, transition to economic and monetary union will not be possible unless simultaneously an effective common transport policy is put in place.

It goes without saying that transport policy, while retaining its specific character, should be directed towards closer links with the other policies.

### III. The importance of the transport system for Community integration

50. The Community's Member States can achieve integration in a genuinely 'common' market, and the Community can lead to 'an ever closer union among the peoples of Europe' (as the Preamble to the EEC Treaty so aptly puts it) only when all its regions are regularly linked by an appropriate transport system.

51. The essential objective of a Community policy in the transport sector aimed at eliminating the existing distortions and bottlenecks, at the integration of national transport networks and their development and rationalization, must be to contribute, equally with the other structural policies, to the gradual elimination of the imbalances which have arisen in the course of historical processes between different regions of Community Europe, between the North and the South.

#### 1. Transport policy and the integration of all the Community regions

52. The Community is still a long way from approaching this end: at the borders between its Member States there are obvious discontinuities in the railway, waterway and road networks - the results of infrastructure policies practised by each State on its own.

53. Filling these gaps in the transport network is an important task for the common transport policy. Mr Klinkenborg's report discusses this matter in detail<sup>1</sup>.

54. But another important task for transport policy is to establish regular links between all the Community's regions and the long-distance transport network and to provide adequate regional networks. This is a sphere in which transport policy and regional policy should dovetail. Overall, planned development of infrastructures should contribute to improving the situation of the regions which have been disadvantaged until now and also to decongesting overpopulated regions.

55. Admittedly, the creation of a modern transport network cannot by itself undo the backwardness of underdeveloped regions: it may, indeed, happen that improved communications lead to an exodus of the population from a particular region. Regional policy, therefore, cannot rely solely on transport policy measures, but should always

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<sup>1</sup> Report on behalf of the Committee on Transport on the Commission Memorandum on the role of the Community in the development of transport infrastructure (Doc. 1-601/80 - rapporteur: Mr J. Klinkenborg). See OJ No C 144 of 15.6.1981 for the resolution adopted by Parliament on the basis of this report.

be pursued as part of an overall programme exploiting simultaneously all the means available to it: location of industry, housing construction, social infrastructures, etc.

While it is true that communications are a necessary prerequisite for modern economic development, the latter cannot be launched by means of the former alone.

## 2. Transport policy and the accession of Greece, Portugal and Spain to the Community

56. From 1 January 1981 Greece will become part of the Community, introducing new elements into its transport policy.
57. The first of these to consider is the truly spectacular increase in the Community's merchant fleet strength. According to 1979 data, this would be more than one third: by addition of Greece's 37.4 million grt the Community's merchant fleet of 73.1 million grt before Greek accession will grow to 110.5 million grt, thus amounting to over a quarter of the world's merchant fleet tonnage of 413 million grt. Even more than the accession of Ireland, the United Kingdom and Denmark, the entry of Greece will force the Community to become more active in the sector of maritime shipping: it is now one in which the Community will have world responsibility.
58. The accession of Greece also raises the problem of communications between that country and the Community. Here, too, priority goes to maritime traffic between Greek ports and those in other parts of the Community. But only a little less important is the problem of overland traffic, by rail and road, between the Balkans and Central and Western Europe. In particular, the Community will have to deal with the problem of transit through Yugoslavia. While the Community has a long history of cooperation in the transport sector with Austria and Switzerland, communications across Yugoslavia must add a new foreign policy dimension to transport policy. The Community will have to work out new principles of 'foreign transport policy' relating primarily to these three transit countries.
59. With the accession of Spain, expected within the current decade, the Community will take in most of the northern coastline of the Mediterranean.<sup>1</sup> By the same token it will acquire important responsibilities in the entire Mediterranean basin, most notably in respect of transport policy. We can envisage the creation of a

<sup>1</sup> The commercial fleets of Spain and Portugal, according to the figures for 1979, will add 8.3 and 1.2 million grt respectively to the total of 110.5 million grt.

'common market' for Mediterranean shipping and ports under the Community's auspices which can be expected to stimulate strongly the development of the coastal regions.

60. In particular different regulations regarding the reservation of cabotage to national flag vessels in the Mediterranean and the adoption of the international agreement on safety, crewing, pollution etc., could lead to a considerable expansion of trade between the ports of Member States.
61. With the accession of Greece and Spain the Community will also have to assume responsibility for the Mediterranean's ecological balance, a problem highly relevant to transport policy, since shipping is among the principal causes of sea pollution.
62. The following data will provide a background to the transport situation in the three countries involved in the 'enlargement to the South':

The share of transport in GNP is, in the case of Greece (7%), Portugal (6.3%) and Spain (6.6%), higher than that for the Community of the Nine as a whole (6.2%) (figures for 1975).

The use of energy (1978) by transport as a percentage of overall energy consumption is much higher for all three countries than for the Community of the Nine (18.3%), at 26.6% for Greece, 38.8% for Portugal and 30.7% for Spain.

On current account (1979), revenue from transport in Greece, Spain and Portugal is greater than expenditure under the same heading: 10.1% as against 5.3% for Greece, 7.9% as against 4.8% for Spain, and 7.3% as against 6.8% for Portugal.

Greece and Portugal, with 76 and 74 km respectively (1979); can be said to have no motorways, whereas in Spain there is a motorway network of 1,745 km. Greece has a railway network of 2,479 km, Portugal, 3,588 km and Spain 13,533 km. Railway freight in Greece in 1978 amounted to only 854 million net ton-kilometers, in Portugal it was only 933 million ton-kilometers in 1976. Compared with 175,397 million ton-kilometers for the Community of the Nine, only Spain's railway freight annual total of 10,708 million net ton-kilometers is of any importance. In none of the three countries is there any internal navigation. In passenger air transport Greece and Portugal, with 4,629 and 3,383 million passenger-kilometers (1978) respectively come about the middle of the classification by country, while Spain, with 13,670 million passenger-kilometers, is near the top. (For the Community of the Nine in 1978: 113,559 million passenger-kilometers excluding SAS)<sup>1</sup>.

In maritime shipping Greece, as already mentioned, is a giant: 37,353 million grt of shipping sailed under the Greek flag in 1979; Spain is in the medium class with 8,314 million grt, and Portugal has a modest 1,205 million grt.

#### IV. Present state of the common transport policy

63. Before embarking on a critical analysis of the Council's and the Commission's omissions in the transport sector, it seems advisable to recapitulate clearly the objectives of the common transport policy:

##### 1. The aims of the common transport policy

64. In discussions of the details of Community transport policy, such as summertime, driving licences, tachographs, etc. which affect the ordinary citizen most directly, but are in fact insignificant elements of an overall policy pattern, there is a growing tendency to lose sight of the essentials.

65. The Council and the Commission behave as if their job was to administer a transport policy already in place with a transport legislation in force - as is the case for the transport policies of the individual Member States. What is forgotten is that it is for the Community to create a common transport policy from scratch. This creative process has come to a halt: for years now every December the Ministers have come together to argue over the number of licences for the carriage of goods by road to be granted out of the Community quota, without giving the slightest thought to the need to work out a common capacity policy for all modes of transport. Exemptions from the use of the

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<sup>1</sup> The figures for road, rail and air transport are taken from the basic Community statistics figuring in EUROSTAT 1980.

tachograph are hotly debated, while the fact is overlooked that this gadget is necessary to monitor compliance with social legislation, the harmonization of which is indispensable if distortions of competition between carriers are to be eliminated - an objective which itself depends on the possibility of establishing for international transport conditions analogous to those obtaining in an internal market, but which makes it necessary, moreover, to devise a capacity policy for all the competing means of transport.

66. In view of the confused state of the polemic between the Council and the Commission, a clear reminder is needed that there is an Article 74 of the EEC Treaty which lays down that, in respect of the transport sector, Member States shall pursue the objectives of the Treaty within the framework of a common transport policy.
67. There is no significance in the fact that Article 75 speaks of 'Member States' and not of the 'Council of the Community', because in the following article it is made clear that the Member States shall act through the Council.
68. The wording of the Treaty prescribing that the Member States shall pursue the objectives of the Treaty 'within the framework of a common transport policy' indicates that it is for the Council to draw up such a policy. The text of Article 74, therefore, in no way envisages that the Council of Ministers might confine itself to dealing with isolated current problems by providing ad hoc solutions. It is, on the contrary, required to work out and lay down a framework of a transport policy. This is a fully rational and justifiable provision, since, in view of the great diversity of the transport policies pursued by the Member States, it was clear from the beginning that a common transport policy would require radical interference with the existing legislations of the Member States. A major work of reform is thus necessary. Carriers, despatchers and all transport users have the right to know in good time what the drift of the common transport policy will be. It is particularly in the transport sector that long-term plans are of fundamental importance for undertakings. The Treaty provision that a framework of transport policy be prepared was thus fully warranted. This should have been done, on the basis of the Commission's proposals, by the Council of Ministers. The only reason that the Council's failure to establish such a framework has not resulted in serious harm over the last twenty years is because transport policy has made such slight progress that it has hardly produced any changes to which the economy would have to adapt.



## 2. The Council's failure to act

69. The European Parliament has only partial influence over how the Council of Ministers acts. In the Community's institutional system, Parliament's current and most important task is to provide opinions to the Council before the latter takes decisions on the Commission's proposals. This consultative function is, however, somewhat incomplete, since there is no on-going exchange of opinions between the Council and Parliament. Views differ as to whether the Council really takes account of Parliament's opinions. Answers to written and oral questions do not amount to a dialogue; the same must, unfortunately, be said of the colloquia held with the Council.
70. This is why the Committee on Transport has sought to establish a dialogue with the Council of Transport Ministers. To this end on various occasions the Presidents of the Council were invited to meetings of the Committee on Transport. Alas, even in this way, it did not prove possible to have a real exchange: what happens usually is that the President of the Council reads a prepared statement, thereafter making it clear that in the debate he is expressing only his personal opinions and is unable to make further comments as President of the Council.
71. It is also unfortunate that, with the Presidency of the Council being limited to a term of six months, each Presidency has difficulty in following through a programme. Furthermore each Minister appears before the Committee on Transport only once in the office of President of the Council. When his country holds the Presidency for a second time, more often than not there is a new Minister in charge.
72. In recent meetings of this type the Committee on Transport has been largely unanimous in conveying to the President-in-office of the Council its view that no common transport policy has yet been established and that the Council has therefore failed to discharge its duties. It has also been made clear that after more than two decades without noticeable progress, Parliament's patience has been exhausted.
73. The Council has steadfastly refused to lay down a framework of transport policy pursuant to Article 74. In 1960 the Commission submitted a memorandum on this subject and in 1973 a communication, the discussion of which by the Council was highly inadequate. The Council has taken no decision on the matter, thus leaving not only the Commission, but the general public, the transport undertakings, transport workers and transport users in uncertainty about the future. Finally, this uncertainty also significantly slows down the development of transport policy in the individual Member States.

74. In the absence of framework decisions, within the Council itself every minor and fragmentary decision gives rise to a full-blown general debate. An example is provided by the annual repetition of the arguments over the fixing of the Community quota for the transport of goods by road. The attempt to replace bilateral quotas by Community quotas has been almost forgotten and instead of just making up their minds on the utilization of the quotas and speeding up the movement of international transport, ministers wrangle over their governments' contesting views as to the need to protect railways, or as to whether the degree of harmonization achieved warrants further measures to liberalize international transport. This is undoubtedly one of the reasons for the Council's inability to act.
75. The Committee on Transport is forced to take note that, within the ambit of its powers of consultation and control vis-à-vis the Council, Parliament has exhausted all the possibilities of fulfilling its responsibilities.
76. Annex I shows the list of proposals currently before the Council.

### 3. The Commission's failure to act

77. As early as 1960, and again in 1973, the Commission submitted, pursuant to Article 74, comprehensive proposals for laying down a framework of a common transport policy. Although these proposals were not received by Parliament with particular favour, they were nevertheless accepted as a valid basis for discussion. But as the Council refused to consider these proposals, the Commission, being a Collegiate body, gave very scant attention to transport problems and was gradually reduced to the pursuance of a policy of 'small steps', a policy which the European Parliament has never endorsed and can much less countenance today.
78. Transport policy was not even mentioned in the documents concerning the mandate of 30 May, with which the future policies of the Community were to be defined - a significant and in certain ways glaring example of how underrated transport policy is. This attitude is reflected in the Community budget where, despite requests by the European Parliament for a Community-wide policy on transport infrastructure, the Commission has earmarked no appropriations, restricting itself to the inclusion of a miserable token entry.
79. Although, in the state in which the common transport policy finds itself today, this policy of small steps is described as 'realistic' and 'pragmatic', it is patently the wrong policy because it sets itself inadequate practical aims.
80. As pointed out above, what we need is to define an entirely new transport policy, which cannot be the outcome of a compromise between the ten policies of the Member States, but must be the fruit of a resolve to frame a modern policy for half a continent that can facilitate the transition to the next millennium.
81. As far as the European Parliament is concerned, attention should be drawn to an important institutional aspect: when the Commission submits to the Council only such proposals as, in its view, have at least a minimal chance of being adopted by the Council, and when it refrains, on the other hand, from submitting those proposals which, while they are regarded as indispensable for the common transport policy, have, in the Commission's view, no prospect of adoption by the Council, the Commission is depriving the European Parliament of a not inconsiderable part of its powers of consultation and control.
82. In its consultative function, the European Parliament has done all it could by drawing up, for a whole series of transport policy sectors, substantial own-initiative reports - which go much further than the Commission's proposals - as well as the important consultative reports by Mr Kapteyn, Mr Murch and Mr Seefeld, to which reference was made at the beginning of the present report.

83. From a perusal of Parliament's proceedings it becomes clear that the Commission has always followed Parliament when the latter took an initiative. Both Mr Kapteyn and Mr Murch were instructed by Parliament to draw up own-initiative reports before the Commission submitted its memoranda and communications.
84. Parliament has acted in this way in respect of a number of policy sectors. It initiated the Community's work on maritime ports (the 1968 Seifriz report and the 1972 Seefeld report), on a systematic policy on transalpine links (the 1973 Noè report and the 1975 Giraud report) and on air transport (the 1960 Corniglion-Moliner report and the 1972 Noè report).
85. In the absence of proposals on the part of the Commission, Parliament was able, by means of these own-initiative reports, to present its desiderata to the Council.
86. Nevertheless, when the Commission fails to submit a particular proposal, Parliament is not able to exercise its powers of control vis-à-vis the Council and proof of the latter's failure to act is not available. Indeed, in the discussions that the Committee on Transport has had with the successive Presidents-in-Office of the Council, the argument was repeatedly advanced that, in the absence of proposals from the Commission, the Council was simply not able to do anything about this or that of Parliament's concerns.
87. If for no other reason, therefore, on these grounds alone the Commission should prepare and submit a systematic outline of transport policy so as to confront the Council with its responsibilities and enable Parliament to oblige the latter to discharge them: if necessary, by bringing an action pursuant to Article 175 - Parliament's ultimate recourse against the Council - for failure to act in infringement of the Treaties.

V. How to break the stalemate

1. Modification of the decision-making procedures in the Council of Ministers

88. The main obstacle to the achievement of a common transport policy has long been recognized: it is the weakness of the decision-making process in the Council.
89. Unfortunately there is still insistence on the rule of unanimity which derives from the 1966 Luxembourg agreement, or, as regards transport policy, on an erroneous interpretation of Article 75(3) of the EEC Treaty.
90. It is virtually hopeless to expect to persuade ten governments to decide unanimously on a proposal concerning a particular measure which is insignificant in itself and acquires importance only in the context, and as an integral part, of a common transport policy. Pressure on the governments to reach a conclusion is of the slightest, opposition against the regulations proposed is strong.
91. Clearly, with ten Member States, and later twelve, the situation is bound to become increasingly difficult, since there will always be some country which will have to make some sacrifice to permit the adoption of any rule applicable throughout the Community.
92. It is thus impossible to deny the need for the rule of unanimity to be abolished in the Council of Ministers, or for the latter to transfer some part of its decision-making powers to Parliament.
93. If the rule of unanimity meant that the Council can change or reject a Commission proposal approved by Parliament by a unanimous decision only, it would be an entirely different matter. But if such a solution is not possible, a majority rule must be introduced for the Council's decision-making.
94. The Member States who find themselves in the minority will be required to make certain sacrifices. Overall, however, the advantages and disadvantages balance out to the benefit of all.
95. Obviously, a limit must be drawn when truly 'vital' interests of a Member State are concerned. But Member States should not be allowed to claim that any and every question is of vital interest: clearly, questions such as driving licences, or the date of the introduction of summer time, are not of vital interest and neither are those of the number of licences to be granted under the Community quota or the rules on access to the market in inland navigation.

96. Article 75(3) of the EEC Treaty contains indications on what questions might be regarded as being of vital interest:

'... where the application of provisions concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities ...'.

97. In terms of this provision, unanimity is required only when principles, and not individual measures, are involved; also in respect of the regulatory system for transport and not merely of a routine administrative measure; moreover, the standard of living and the level of employment of entire areas must be at stake.

98. Besides, the likelihood is extremely small that a Council decision might be prejudicial to the vital interests of a country: it is clear that, in its proposals, the Commission must take account of the vital interests of all the States. For the vital interests of a country to be put at risk at Council level, the Commission would have to commit a gross error of judgement in preparing its proposals.

99. There would thus be no serious danger in the Council's abandoning its rule of unanimity.

2. Closer consultation by the Council and the Commission with the directly-elected Parliament

100. Other committees in other contexts will put forward proposals on the possible ways of increasing Parliament's influence over the Council and the Commission or of equipping Parliament with greater decisional powers. Drawing on its own experience, the Committee on Transport wishes to present some proposals which could be put into effect without amending the Treaties or changing the institutional balance.

101. From 1973 onwards the Committee on Transport has held regular meetings with the President-in-Office of the Council of Ministers of Transport, meetings which, though interesting, produced no results. For the Council meeting of 6 December 1979, the first to be held after the direct elections, the Irish President-in-Office of the Council, Mr Faulkner, had the item 'Participation by the President of the Council at a meeting of the European Parliament Committee on Transport'<sup>1</sup> entered for the first time on the agenda. Unfortunately, on the day of the

<sup>1</sup> Council of the European Communities, General Secretariat: 'Press release, 613th Council Meeting - Energy -' (Doc. Presse 156-G, 6.12.79).

meeting, the Irish Minister, who was detained for political reasons in Dublin, had to relinquish the chair to his successor, the Italian Minister, Mr Preti. The Council heard the oral report of the Permanent Representative. The outcome was announced in the following terms: 'The report gives an account of the nature of discussions within the Committee on Transport, and draws the Council's attention to the views expressed by the Honourable Members'.

102. The Italian, Luxembourg and British Ministers, during their tenure, failed to include an exchange of views with the Committee on Transport on the agenda of the meetings they chaired.

At the Council meeting of 26 March 1981, the Dutch Minister reported on his exchange of views with the Committee on Transport. Unfortunately, that was the only meeting during the period in which he held the chair.

103. It would thus be advisable to make more definite provisions for meetings between the Committee on Transport and the President of the Council.

Instead of vague promises that the points put forward would be conveyed to the other Council members, it would perhaps be preferable to speak in precise terms of proposals pending before the Council, including the relevant opinions of Parliament.

104. On more than one occasion proposals have been put forward for increasing the 'transparency' of Council meetings. So far the Council had categorically refused to meet in public. An acceptable compromise proposal, which perhaps merits a trial in the transport area, has been recently advanced in Mr Seefeld's report. Council meetings could be attended by the chairman and the rapporteur(s) of the Committee on Transport, without voting rights, but for the purpose of explaining to the Council Parliament's position on particular items of the agenda. If necessary, such a meeting could be held before the official Council session.

105. In connexion with this proposal, as a corollary to it, or separately, it could be arranged through officials for the appointment of a representative of the Secretary-General of Parliament to take part - without voting rights, naturally - in the meetings of the Transport Group of the Permanent Representatives, so as to exert pressure on them to take effective account of the parliamentary reports.

106. Cooperation with the Commission is basically free of problems, except that Parliament has not so far succeeded in convincing the Commission of the need of at least trying to submit to the Council an overall proposal for a framework common transport policy in a form which would permit the Council to make a decision on the matter. Only by doing this can the Commission avoid being also indicted by the European Parliament for failure to act. In addition, all the other appropriate proposals should be officially laid before the Council: both those concerning sectors mentioned in the Treaty and those complementary to the framework common transport policy.

### 3. Closer consultation with the national Parliaments

107. Until its election by direct universal suffrage, all the Members of the European Parliament were also members of their respective national Parliaments. After the elections, the European Parliament's links with the nine Parliaments of the Member States became weakened, because there are few Members with a double mandate.

108. Nevertheless, there exist possibilities for systematizing cooperation with the national Parliaments at every level. The periodic conferences of the Presidents of Parliaments are already well established, and so is the European Centre for Parliamentary Research and Documentation under the auspices of the EP Secretariat. A not insignificant corollary of this work would be consultation or, at least in the initial stage, an exchange of views between the European Parliament's committees and the corresponding committees of the national Parliaments.

### 4. Mobilizing public opinion and overcoming the resistance of sectional interests

109. In addition to holding direct exchanges with the Council of Ministers, the Commission and the transport committees of the national Parliaments, it would also be desirable to ensure that the public at large is better informed on the Community's transport policy (including all its European aspects).



110. For the purpose of discharging this task the European Parliament has its own information service which, however, is presumably short of staff and resources.

From the Committee on Transport's point of view, there is a lack of specific information for the parties concerned as well as of information for that section of the general public which is interested in these problems.

The resources available to Parliament's information service, which comprises a Directorate-General for Information and Public Relations located in Luxembourg and information offices in the capitals of the Member States, are only sufficient for the provision of general, but not of specialized, information. As a result, it is often impossible to reach the specialist press and there is a lack of contact between the European Parliament and both those involved in European transport policy matters and the concerned section of public opinion.

111. We should perhaps pinpoint the practical difficulties: transport problems do not figure on the agenda of all the plenary sittings. It is thus not worthwhile for the specialist press to send its reporters regularly to all the part-sessions. Only the largest organizations are able to subscribe to the full documentation published by the European Parliament in order to select from it materials of interest, whereas carriers' associations, specialist trade unions and the specialist press cannot, for the most part, afford it. At present it is not possible to subscribe to a specific series of EP publications: even the Committee on Transport's press releases can be obtained by subscription only together with similar releases of all the other committees, which makes the undertaking impractical both physically and financially.

112. The Committee on Transport therefore wishes to put forward the following proposal:

- (1) The Secretary-General of the European Parliament shall open specialized subscriptions (e.g. corresponding to the areas of activity of each committee) for working documents and the committees' press releases.
- (2) After each part-session summaries of debates shall be published, subject by subject, together with the resolutions.

113. A further possibility of mobilizing public opinion, as well as overcoming the resistance of sectional interests, is to organize parliamentary inquiries (hearings). The Committee on Transport has already begun doing this, scoring some notable successes. Organizations of groups concerned with European transport policy had no hesitation in sending to these hearings their most prominent representatives. In many cases these representatives of associations and other experts were thoroughly perplexed as to the future of Community transport policy and had hoped for clarification from the European Parliament - an expectation which, given the present extent of the latter's political powers, proved in many cases over-sanguine.

5. The problem of resources and of the reform of the Community budget

114. The European Parliament has much greater powers of control and decision in budgetary matters than in other sectors of Community policy. Unfortunately, its budgetary powers have been of little relevance in the transport sector, because transport policy has primarily consisted in eliminating obstacles and discrimination and in the harmonization of provisions, none of which involved major expenditure.

115. Whereas from 1958 onwards, transport policy involved no expenditure, if we except the salaries of the officials in Brussels, now it has become urgent to decide whether the Community should allocate more for the improvement of transport infrastructures (cf. the Klinkenberg report).

It is true that until now a considerable part of the Community's financial resources has been devoted, under various headings and through various financial instruments, to the financing of aids in the sector of transport infrastructures, but not under the transport policy (funds from the EIB, the Regional Fund, the NCI). The new element introduced by the Commission's proposal is the opening of a special line in the Community budget for expenditure on infrastructures. This requires, amongst other things, that the various items of financial aid in this sector should be coordinated. But Parliament cannot hope to put into effect the entire common transport policy merely by means of these budget lines. Infrastructure policy is an important aspect of transport policy, but there are others.

116. The stagnant state of the Community budget in recent years, due to shortage of resources, contributes to the deterioration of the process of European integration and may well halt it altogether.

While this is neither the time nor the place to deal with such a vast problem in its entirety on which, in any case, important initiatives by Parliament are in hand, it should nevertheless be kept in sight because on its solution ultimately depend the prospects of finding the necessary resources for the various structural policies essential for economic recovery and the creation of employment.

The question of restructuring the budget, whether by increasing own resources or by amending agricultural regulations in order to control the aberrant mechanisms that lead to growing agricultural surpluses, is being actively considered and has now become a critical test of the Community's ability to emerge from the impasse in which it has remained for some time.

A solution to this problem is thus an essential prerequisite to all initiatives for a new transport policy.

#### 6. Need to increase staff dealing with transport policy

117. More financial resources must also be made available to increase the number of officials in the Commission's Directorate-General VII - Transport.

Recent reorganization of the administration has resulted in the reduction of the administrative units of the transport directorate from twelve to eight and the abolition of some services, including that with responsibility for ports policy.

It is obvious that it is absolutely indispensable to strengthen these structures.

Otherwise, all the proposals and all the declarations of commitment or intent must remain a dead letter.

#### VI. Further proposals for a systematic transport policy

118. The preceding sections present a number of constructive proposals to confer on transport policy the systematic nature which it has so far lacked. Undoubtedly, amendment of the Council's decision-making procedures, establishment of closer cooperation between Council, Commission and Parliament, improved links between the European Parliament and national Parliaments, mobilization of public opinion and, lastly, reform of the Community budget and increased staff strengths, are indispensable measures if transport policy and the

Community's other structural and sectoral policies are to be made more incisive.

1. Abandon the policy of small steps

119. But it has to be said again that the Commission must adopt, in the form of a proposal for a Council decision a 'framework of a common transport policy', as provided in Article 74 of the Treaty.

It should be remembered that neither the 1960 Memorandum nor the 1963 Communication, on the contents of which Parliament has on several occasions given its opinion, has ever achieved the form of a proposal for a Council decision.

In the Mursch report the European Parliament invited the Commission in clear terms to act in this sense. Indeed, in the report the Commission's Communication was analysed and amended point by point as a draft law. The Council, however, met with extreme reluctance even the Commission's proposal to deliberate on the Communication alone. Thus no decision was reached in the Council and the Commission has not even submitted any specific proposals in the matter.

2. The Commission's triennial plan and its limitations

120. The 'triennial plans' subsequently submitted by the Commission cannot be regarded as a substitute for the 'framework of a common transport policy'. The triennial plan for 1974-1976 was included in the 1973 Communication as an action programme. No similar plan was prepared in 1977; instead, a first pause was introduced in the three-year pattern. In November 1977 the Commission, on the Council's invitation, submitted, again merely in the form of a communication, a Council Working Programme for the three years 1978-1980, containing a list of priority business.
121. It was 1980 before the Commission, acting on Parliament's invitation, submitted a third triennial plan accompanied by a list of priorities together with a timetable - this time in the form of a proposal for a Council decision. An appropriate report was drawn up on this by Mr Hoffman, on behalf of the Committee on Transport.<sup>1</sup>

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<sup>1</sup> Report drawn up on behalf of the Committee on Transport on the Commission proposal concerning priorities and the timetable for decisions to be taken by the Council in the transport sector during the period up to the end of 1983 (Doc. 1-951/80). See OJ No C 77 of 6.4.1981 for the resolution adopted by the European Parliament.

122. On this occasion at least the form, if not the substance, was complied with. A time-schedule for 29 objectives in the programme plus 6 others to be dealt with at some time during the three-year period cannot be described as a 'framework of a common transport policy'. The individual objectives of the programme are not structurally interlinked. Above all, the financial support needed to carry out these programmes is lacking. The comments are inadequate. Reference to the 1973 Communication cannot compensate for the fact that this was not submitted to the Council in the form of a proposal and that it was never adopted.
123. Hence, even if the Council had adopted the list of priorities and their timetable in the form of a resolution, the Commission and the Council would not have discharged the duty of drawing up the framework of a common transport policy.
- Indeed, at its meeting of 26 March 1981, the Council merely took note of the list and decided that it would be taken as a 'basis for the Council's future discussions on transport'. (see Doc. 5800/81 - Press Release 45)
124. In addition, there is the problem of ascertaining what significance is to be attached to a Council resolution. By the terms of Article 189 of the EEC Treaty, only regulations, directives, decisions, recommendations and opinions of the Commission and the Council are legally binding acts.
125. It seems likely therefore that, within the meaning of the Treaty, no legal force attaches to a Council resolution. (At any rate Article 175 speaks of failure to 'act'.\*)
126. In the course of the European Community's development a new legal usage has arisen of 'voluntary undertakings' on the part of the Council, the legitimacy of which is recognized by all the Member States, though the Court of Justice has not yet ruled on its formal legal standing. Whenever the Council has, in one of its legally binding acts, set down a deadline by which a decision was to be adopted, it has always respected that undertaking, even in the most dramatic circumstances which required night sittings, marathon sessions and such extreme expedients as stopping the clocks.
127. One can hardly expect, however, a similar effect from a resolution on a time-schedule.

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\* In English. In Italian, the language of the original of this report, the word is 'pronunciarsi' (Transl.)

128. Also from this point of view, therefore, the adoption of the triennial plan in the form of a Council resolution cannot remedy the failure to act in respect of the creation of a framework of a common transport policy.

3. Need for further proposals in view of the changed situation in the Community

129. The reference to the 1973 Communication as a framework for a common transport policy does not provide a satisfactory answer because of one further consideration: there have been many new developments since that time which must be taken into account.

130. We need only mention the exacerbation of the energy crisis, the growing importance of transport policy vis-à-vis third countries, notably Switzerland, Austria and Yugoslavia, following the Community's enlargement, and the extraordinary importance assumed by sea and air transport in the Community's external relations, to demonstrate the need for an updating of the 1973 programme.

131. Above all, a global approach should be adopted comprising all the modes of transport - not only road, rail and inland waterway with which the Commission has traditionally concerned itself, but also sea and air transport which, on a narrow and distorted interpretation of Article 87, has been neglected so far.

4. The role of infrastructures

132. Next, agreement must be reached on the means of effectively coordinating those transport infrastructures for which the Commission in its Memorandum rightly considers itself competent.<sup>1</sup>

133. The merit of the Memorandum is that it indicates the main lines of a transport policy in the infrastructures sector. Implementation of this policy through specific decisions and other acts by the Commission and the Council could significantly contribute to the resumption of the Community's economic unification.

134. The importance of this proposal also lies in the contribution that it can make to restoring the competitiveness of the Community's economy in the world market and at the same time to achieving the integration of the Community's regions.

135. We should therefore oppose and reject the arguments of those who claim that this is one of those proposals, implementation of which should be postponed until better times, when the economic crisis and the Community's present financial difficulties have been overcome.

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<sup>1</sup> COM(79) 550 final

In the report he submitted to Parliament<sup>1</sup>, Mr Klinkenborg rightly stressed that this proposal contains extremely important investment decisions, which would be included in the current budget, precisely in order to tackle the consequences of the economic crisis and create new jobs.

136. In the absence of such a decision, which necessarily implies approval by the Council of the financial regulation, no serious progress can be made towards eliminating the existing obstacles in the Community transport network, whether they be natural obstacles such as the Alps, the Channel or the Messina Straits, or due to difficulties in transit through third countries such as Switzerland, Austria and Yugoslavia, or the whole series of shortcomings and bottlenecks which currently exist in the Community transport network.

Early adoption and financing of such an infrastructures policy is needed if we are to have more active cooperation on transport matters with these countries, and better communications between Europe's North and South and between the heavily industrialized areas on the one hand and the Mediterranean ports, or the Community's outlying and less well-equipped regions, on the other.

##### 5. Removing the imbalance between liberalization and harmonization

137. The principal aim of transport policy, as already noted, is to liberalize international transport movement, i.e. to achieve a common market in transport: a market that is as free as possible and in which conditions similar to those in a domestic market exist.
138. But we cannot proceed far in this direction unless there is sufficient harmonization of the cost factors. The Committee on Transport has drawn attention to the fact that at present liberalization measures have a clear lead over harmonization.
139. Thus, for navigation on the Rhine, complete freedom has been achieved. For road transport, an additional Community quota has been introduced, without eliminating the bilateral quotas. Transport on own account has been fully liberalized. But on the harmonization side of road transport there is only the regulation on maximum speeds at the wheel and the tachograph. Other important social provisions are still to come - for this and other modes of transport. There is nothing so far in the way of tax harmonization. The first regulation on the approximation of the basis of assessment of vehicle tax has

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<sup>1</sup> Doc. 1-601/80 (see footnote to para 53 for more specific details)

once again vanished from the Council's agenda and the whole project is being jeopardized by the Federal Republic of Germany, where the governing coalition is seriously considering the possibility of abolishing vehicle tax.

140. There is still no sign of the main technical provision of transport policy coming from the Council, the fundamental pre-requisite for many other decisions, i.e. the decision on the dimensions and weight of commercial road vehicles.
141. The Committee on Transport wishes to see a liberalization of transport, provided, however, that a sufficient level of harmonization is achieved in parallel.
142. Road transport, inland navigation, air traffic and maritime shipping should be able to function at the international level as freely as in their own country. Whenever the degree of freedom of transport enterprises as regards capacity and prices becomes too disparate in the various Member States to allow free competition, such differences should be levelled out through the approximation of legislations and introduction of common rules. Whenever the burden to transport enterprises of State impositions, such as taxes, social provisions, technical requirements or other forms of State intervention becomes too unequal to allow free competition, these factors of cost distortion should also be evened out by harmonizing legislation.
143. When these measures, aimed at ensuring the proper functioning of the common market in transport have been introduced, a series of measures will still be needed for the proper functioning of the market in goods, i.e. for all those cases where differences between the rules governing transport result in distortions of costs to transport users, and hence in distortions of competition in the markets for goods.

#### 6. Cooperation among railways

144. Cooperation among railways should be further developed, primarily because, as the resolution adopted by the European Parliament<sup>1</sup> on the basis of Mr Cottrell's report emphasizes, 'given their relatively low energy consumption, "soft" impact on the environment and suitability to automated technology and combined transport, the railways have a potentially important contribution to make towards the furtherance of the general economic and social objectives of the Community'.

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<sup>1</sup> OJ No C 197 of 4.8.1980 (on the basis of report Doc. 1-267/80)



We should seek to achieve conditions for international traffic that are not different from those for domestic traffic and to ensure that differences in the tariff systems of the Member States are no longer so great as to be able to cause by themselves distortion of competition in industry, agriculture and the services sector.

The proposals for action on which Parliament has given its opinion concern, in addition to measures for balancing the budgets of railway undertakings and those relating to public service obligations, possible ways of promoting the coordination of:

railway investment and finance within the European Community (including the possibility of private financing of such projects as electrification, inter-city passenger services and intra-Community freight services);

new technologies applied in the operation of new railway undertakings with the aim of increasing operational efficiency;

commercial and operational structures of railway networks, particularly in the freight market (including common goods wagons and tariffs), in order to facilitate cross-frontier traffic;

all other areas in which the railway undertakings of the Member States have a common interest.

## 7. Road Transport

145. Ever since its election by direct universal suffrage, the European Parliament has let it be understood that it wishes to see common regulations introduced for road transport in Europe and that the present state of Community legislation is by no means satisfactory.

Parliament has frequently dealt with the Community quota (Albers report Doc. 1-381/79, OJ C 289/79; Moreland report Doc. 1-555/80, OJ C 327/80 and Doc. 1-950/80), as well as with problems of social provisions (Key report Doc. 1-89/81, OJ C 172/81) and combined transport (Gabert report Doc. 1-395/81). Parliament was able to make a special contribution to harmonizing provisions concerning permitted weights and certain other technical characteristics (Carossino report Doc. 1-865/80, OJ C 144/81).

## 8. Inland Waterway Vessels

146. Following direct elections, the European stated its position on technical requirements for inland waterway vessels (Baudis report, Doc. 1-380/79, OJ C 289/79). It also expressed its opinion on the problems of inland waterway vessels in reports on the monitoring of markets (Janssen van Raay report, Doc. 1-187/81, OJ C 172/81) and on transport infrastructure (Klinkenberg report, Doc. 1-601/80, OJ C 144/81).

## 9. Air transport

147. In regard to air transport, Parliament has recently adopted a number of resolutions on the basis of the reports submitted on behalf of the Committee on Transport by Mr Hoffman and others<sup>1</sup> (report on the Memorandum of the Commission of the European Communities on the contribution of the European Communities to the development of air transport services, which contains a priority list for air transport).

The resolution states that future measures in the field of air transport must be guided by the following principles:

- improvement of the services offered to the transport user;
- reasonable conditions of operation for viable air lines and their efficient management;
- safeguarding and expansion of employment;
- improvement of air traffic safety;
- reduction of environmental pollution by air traffic;
- energy saving.

148. Within this context specific proposals are put forward concerning air transport competition and tariffs, air transport networks and regional services, social aspects of air transport, safety in the air and on the ground and, lastly, the aerospace industry.

These guidelines should now be gradually transformed by the Commission into corresponding proposals for decisions to be submitted to the Council for adoption.

<sup>1</sup> Based on the Seefeld report (OJ C 289/79), the Hoffmann report (OJ C 309/79), the Schwartzenberg report (OJ C 291/80), the Janssen van Raay report (OJ C 197/80), the Hoffman report (OJ C 291/81), the Janssen van Raay report (Doc. 1-553/81) and the Key report (Doc. 1-559/81).

10. Maritime transport and ports

149. In respect of sea shipping it has to be admitted that, despite efforts to achieve Community cooperation within international bodies, and joint actions vis-à-vis third countries or in the matter of safety and combating pollution, the Community has not so far succeeded in developing initiatives commensurate with its own role and responsibilities as the world's first trading power which commands about one-quarter of the world's merchant fleet.
150. In connection with the submission and adoption by the European Parliament of the report drawn up by Mr Carossino on behalf of the Committee on Transport on the proposal for a Council directive concerning the enforcement, in respect of shipping using Community ports, of international standards for shipping safety and pollution prevention<sup>1</sup>, it was emphasized that maritime transport is one of those sectors where cooperation between the countries of the Community and cooperation by the latter with other countries within international bodies, is not merely of great, but of critical, importance.
151. It is neither possible nor opportune in this report to enter into the details of the complex and difficult problems of sea-transport policy. It will suffice to summarize the essential points of a 'policy on the sea' which the Community ought to develop.

First and foremost, there are the problems relating to the need to maintain a Community merchant fleet that is competitive in the world market. Under this heading come measures which are already being studied or which ought to be introduced in respect of flags of convenience, relations with state-trading countries, further measures on shipping safety indicated in the report, measures against flag discrimination and those for the proper implementation of the Code of Conduct for Liner Conferences.

<sup>1</sup> Doc. 1-708/80. Resolution: OJ C 28/81

152. Then, we should bear in mind the importance of the implementation of a common policy on the sea for the Community's crisis-stricken shipbuilding industry, and the advantages it will derive from such a policy.
153. If this policy is to be developed, and the role of the Mediterranean in intra-Community traffic enhanced, a policy for strengthening and developing infrastructures in ports and on land is in turn required. It is of fundamental importance for all the maritime countries that the EEC should pursue an integrated sea transport policy, i.e. one comprising also shipyards and ports. In particular the Mediterranean countries, e.g. Italy and Greece, by modernizing and developing their transport network, could come to play a much more important role in the development of the Community's Mediterranean trade links with Africa and the Middle East.
154. A recent confirmation of the importance of this matter was provided by the European Parliament's decision to include Mediterranean sea ports among the objectives of priority action for the next three years.<sup>1</sup> It is now hoped that the Commission will act in response to this guideline for transport policy.

VII. Proceedings against the Council and the Commission for failure to act

155. By means of the present report, Parliament's Committee on Transport is once again acting in fulfilment of its duty to stimulate and urge the Community to adopt an overall policy on transport.

Constructive proposals have been advanced and the European Parliament's Committee on Transport is ready to cooperate with the other Community bodies.

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<sup>1</sup> See Hoffmann report Doc. 1-951/80, together with OJ No C 77 of 6.4.1981

156. It is now up to the Commission and the Council to respond to this invitation and draw up an overall transport policy.
157. Should the Commission and the Council, however, reject the European Parliament's outstretched hand and continue in their old ways of 'small steps' and disjointed and contradictory partial measures, the only means left to the European Parliament to assert its political will would be to bring proceedings, pursuant to Article 175, against the Council and the Commission for failure to act.
158. Your rapporteur hopes that matters will not come to such a serious pass; it is nevertheless advisable at this point to consider the possibility seriously.
159. Because preparations for such legal action are fairly complex and time-consuming, its legal and procedural aspects are examined separately in Annex II. This annex is based on the opinions collected in competent Community circles, particularly from the Legal Affairs Committee of the European Parliament.

#### CONCLUSIONS

160. In drawing up the present report your rapporteur has referred closely to parliamentary precedent and has sought to demonstrate the efforts made throughout the years by the European Parliament to put forward a systematic transport policy.
- He has also drawn attention to the changes which have occurred over these years in the Community's economic situation and as a consequence of its enlargement, changes which render even more urgent the adoption of this policy, the aims and content of which have been updated and developed.
161. The European Parliament has now almost exhausted the means available to it to induce the Commission and the Council to fulfil their obligations.
162. Parliament still has at its disposal one important stipulation of the EEC Treaty: the provisions of Article 175. This recourse has never been used to resolve contentions which have arisen in the past, the European Parliament having always, and rightly, preferred to discharge its own duties through political confrontation with the other institutions.

163. The time has now come to decide, in the light of past experience and of the poor achievements of recent years, whether this is not the moment to summons the Council and the Commission before the Court of Justice.
164. In legal terms, the views and opinions collected show that Parliament is entitled to proceed, in respect of the transport sector, against the Council and the Commission for failure to act.

The choice before the Committee on Transport and the European Parliament is thus essentially a political one.

165. The aim of the report has been to present the necessary data for evaluating the decisions that have to be made.

Your rapporteur now leaves it to the Committee on Transport to assess the situation and, in its wisdom and sense of responsibility to decide whether it would be possible and appropriate to propose that the European Parliament resort to such an extreme step.

Proposals submitted by the Commission to the Council (situation at mid-November 1981)  
(before the Council but not yet adopted)

Subject of proposal

	Commission proposal	EP's opinion	ECS opinion
<u>I. Infrastructure</u>			
- Support for projects of Community interest in transport infrastructure	C 207/76	C 293/76 C 183/77	C 56/77
- Amendment (implementation) in respect of projects in non-Member States	C 89/80	C 197/80	C 300/80
<u>II. Functioning of the market</u>			
- System for observing the markets for carriage of goods by road, rail and inland waterway	C 1/76	C 293/76	C 281/76
- Amendment (Art 149(2))	C 351/80	C 172/81	C 189/81
- Fixing of rates for international goods transport by rail			
- Amendment	C 185/77		
- Direct international railway tariffs ECSC (new agreement)	COM(76)29 final		
- Establishment of common rules for certain types of carriage of goods by road between Member States (amending first directive)	C 253/80	C 327/80	C 138/81
+ Amendment of directive 65/269/EEC			
- Transport on own account of goods by road (remainder)	C 41/79	C 127/79	C 113/80
- Adjustment of capacity for the carriage of goods of goods by road for hire or reward between Member States (bilateral agreements) (remainder)	C 247/78	C 67/79	C 133/79

- System of reference tariffs for the carriage of goods by inland waterways between Member States	C 54/76	C 6/77	C 281/76
- Amendment	C 185/77		
- Access to the market for transport of goods by waterway	C 95/68	C 198/68	C 100/68
- Access to the occupation of carrier of goods or of passengers by waterway (in national and international transport)	C 1/76	C 125/76	C 197/76
- Development of combined transport	C 351/80	C 260/81	
+ Amendment of Regulation 1107/70 (EEC) by addition of provisions concerning combined transport			
- Amendment of Regulation 3164/76 on Community quota			
+ Amendment of Directive 65/269/EEC - authorizations (tractors)	C 350/80	C 144/81	C 138/81
- Amendment of Regulation 3164/76 Community quota (20% increase)	C 269/81		
- Acceptance of the ECMT resolution - international removals	C 299/80	C 327/80	C 353/80
- Amendment of Directive 75/130/EEC - combined road/rail carriage of goods	COM(81)576		
- Conclusion of ASOR Agreement	COM(81)617		
 <u>III. Tax issues, state aids, social advancement, safety, reform, modernization, cooperation.</u>			
- Amendment of Directive 68/297 on duty-free admission of fuel	C 104/74	C 155/74	C 142/74
- First directive on regularizing national vehicle tax systems	C 95/68	C 63/69	C 48/69
- Addendum to Regulation 1191/69	COM(72)1516 final	C 37/73	C 86/73
- Amendment of Regulation 1192/69 on the normalization of the accounts of railway undertakings	C 307/77	C 163/78	C 269/78
- Harmonization of certain provisions on road safety (second stage)	C 249/77		



- Amendment C 249/77
- Harmonization of certain provisions on goods transport by waterway C 259/75 C 57/77 C 61/77
- Amendment C 206/79
- Mutual recognition of diplomas for passenger transport and goods haulage operators (road and waterway) C 1/76 C 125/76 C 197/76
- Amendment of Regulation (EEC) No. 1191/69 on obligations inherent in the concept of a public service C 268/81 C 260/81
- Time-limit and conditions for the achievement of financial balance by railway undertakings ) C 37/81 )
- + Amendment of Decision 75/327/EEC on the improvement of the situation of railway undertakings )

IV. Maritime Shipping

- Ship inspection forming the subject of IMCO resolutions C 284/78 C 39/79 C 128/79
- Mutual recognition of approval of ships' safety equipment
- Inspection of ports C 192/80 C 28/81 C 159/81
- Concerted action of EEC in the field of shore-based maritime navigation aid systems C 256/81
- Implementation of Arts. 85 and 86 (rules of competition) COM(81)423

V. Air Transport

- Implementation of Arts. 85 and 86 (rules of competition) COM(81)396
- Amendment of directive on the limitation of noise emissions from subsonic aircraft COM(81)512
- Limitation of noise emissions from helicopters C 275/81

- Authorization of scheduled inter-regional air services of passengers, mail and cargo between Member States COM(80)62-
- Tariffs for scheduled air transport COM(81)59

VI. External Relations

- Amendment of European Agreement concerning the work of crew of vehicles engaged in International Road Transport (AETR) and accession to the same (N.B. letter adopted on 25.6.1979 by the Council) COM(78)76- final

VII. Miscellaneous

- Weights and dimensions of commercial road vehicles
  - 112/62
  - 244/final 26/63
  - first amendment COM(63)131 final C 157/63 C 210/64 C 174/65
  - second amendment COM(64)174 C 124/71 C 61/72
  - third amendment C 90/71 C 106/71
- Weights and other characteristics (not including dimensions) C 16/79 C 144/81 C 113/80
- Amendment COM(81)510
- Technical requirements for inland waterway vessels C 254/79 C 289/79 C 182/80
- Summer-time arrangements (second directive) C 84/71 C 260/81
- Harmonized application of the International Convention for Safe Containers (CSC) C 228/80 C 327/80 C 138/81

Legal and procedural questions relating to proceedings against the Council and the Commission for failure to act

(a) Introduction

1. To achieve an overall approach to the problem of transport policy, it would be necessary to consider the advisability of proposing to start proceedings for failure to act both against the Council and against the Commission.
2. In an action against the Council alone, the latter could justify its inertia by the absence of proposals from the Commission; if proceedings were instituted only against the Commission, on the other hand, the latter could simply plead in justification, as it has done on several occasions in the past, the Council's inadequacy in taking decisions.
3. On the other hand, proceedings for failure to act brought simultaneously against the Council and the Commission would focus on the whole complex significance of a common transport policy. The aim is not so much to denounce specific acts of omission of this or that Community institution, as to strike at the totality of failures to act, charging the institutions concerned with responsibility for this failure, so as to enable the Community's Court of Justice to hand down a verdict which will spur into action all the bodies which play a part in the development process.
4. By the terms of Article 175 of the EEC Treaty, Community institutions, Member States, and any natural or legal person may bring proceedings before the Court of Justice against the Council or the Commission for their failure to act.

However, in the event of proceedings being brought against the Council alone and the subsequent acquittal of the latter institution on the grounds that its failure to act was due to the absence of Commission proposals, this would be tantamount to a moral condemnation of the Commission which would be almost as serious as a direct ruling against it.

5. It is the task of the Court of Justice to establish failure to act by the Council or the Commission; its verdict is, however, purely declarative. It is confined to finding that there has been failure to act by the institution complained against, the latter being left free in the choice of measures it will take to comply with the judgment pursuant to Article 176. There is, however, no doubt as to the obligation to take such measures, imposed upon the institution concerned by the first paragraph of Article 176. The locus standi of natural or legal persons depends on their ability to prove their legitimate interest; this does not apply to institutions or Member States, which may bring an action also in the interest of the development of the law, as is the case in the present issue.

6. Institutions and Member States have not so far made use of the right of judicial recourse granted them by Article 175. The fact that the institutions have refrained from bringing an action under this article is due not so much to scrupulous fulfilment by the Council and the Commission of their obligations under the Treaty as, clearly, to the determination of those who might have brought such an action to pursue the aim of progressive integration primarily through all the other political means available, and resort to legal action only in extremity.
7. Within the Community's institutional structure, the range of instruments with which Parliament wields its authority is not particularly well graded: in normal legislative activity Parliament (except in the case of the budget) exercises only a consultative function. When Council or Commission refuse to accept Parliament's suggestions, the latter has at its disposal only two rather blunt instruments: the motion of censure under Article 144 or proceedings for failure to act under Article 175.
8. As yet, neither of these instruments has become a fact as far as Parliament's control over the Commission's activities is concerned, motions of censure were tabled on several occasions, as for instance over agricultural policy. But so far no such motion has obtained in Parliament the necessary majority - obviously because there was unwillingness to dismiss the full Commission as a result of dissatisfaction with one particular sector, or to face a fairly prolonged period with no Commission in office.
9. The point is that it is not possible to table a motion of censure against a single Commissioner in respect of the specific sector for which he is responsible, because in accordance with the second paragraph of Article 144, 'the members of the Commission shall resign as a body', on the principle of collective responsibility.
10. Proceedings for failure to act are not a measure as grave as the motion of censure because they can also, and notably, be instituted in respect of specific sectors. There is the further advantage that they can be brought both against the Commission and the Council.

(b) Admissibility of an action for failure to act pursuant to Article 175 EEC

11. Ever since the establishment of the EEC, the Court of Justice of the European Communities has dismissed, as inadmissible, without exception all actions brought before it pursuant to Article 175. Part of the reason for this lies in the difficulty of satisfying all the conditions of admissibility. In the following analysis we propose therefore to examine carefully the question of admissibility of a suit for failure to act.
12. With reference to the admissibility of a suit by the European Parliament pursuant to the first paragraph of Article 175 EEC, the following points require special consideration:
- Parliament's capacity to bring an action
  - the Council's and the Commission's capacity to be made a dependant
  - the type of measure, failure to adopt which is alleged against the Council and the Commission
  - the specific procedural requirements laid down in the second paragraph of Article 175 EEC
  - the adequacy of the grounds of the action.
13. Parliament's capacity to bring an action
- According to the first paragraph of Article 175 of the EEC Treaty, the Member States and the other institutions of the Community may seize the Court of Justice should the Council or the Commission, in infringement of this Treaty, fail to act. When the Court of Justice finds that such infringement has occurred, the institution concerned is required to take those measures that execution of the Court's verdict implies.
14. An act contrary to the Treaties on the part of an institution may be positive or negative, i.e. it may be one of commission or omission. The faculty of taking proceedings for failure to act is intended to enable a plaintiff to institute legal proceedings also in the case of failure to perform, contrary to the Treaty, a Community act, and thus to oblige the institution guilty of the omission to repair, by means of a positive act, the infringement of the Treaty implicit in the omission.
15. There is a body of academic doctrine which denies Parliament's right to bring a suit for failure to act, maintaining that it would not be logical to endow it with such a right when it already possesses in respect of the Commission, and to some extent also of the Council, a right of political control. This body of opinion also claims

that it is unlikely that the authors of the EEC Treaty intended to authorize Parliament to sue the Commission or the Council for failure to act when they have denied to it the right to challenge the legality of positive acts by means of a suit for annulment. But this argument erroneously equates the two types of legal recourse, proceedings for annulment and proceedings for failure to act, which are distinct in their circumstances, content and purpose. These differences also account for Parliament's right to make use of the procedure for failure to act.

16. No more convincing is the general constitutional argument according to which Parliament should not be able to sue the executive organs for failure to act because, within the balance of the Community's institutional structure, it is the Council which has the legislative power, while Parliament, which fulfills essentially a consultative and controlling function, has only a restricted share in the legislative function. In fact, this shows Parliament's capacity to sue for failure to act as a strengthening of its control powers.

It is, moreover, logical that, for the purposes of the law's development, Parliament should be accorded this faculty within the Community's institutional structure.

17. It was clearly the intention of the authors of the Treaty to grant to Parliament the right to proceed for failure to act as an instrument for maintaining the Community's dynamic when it becomes necessary to induce the Council and the Commission to act in accordance with the Treaty.
18. The most convincing argument as to Parliament's capacity to bring proceedings is provided by Article 175 EEC, the wording of which is quite unequivocal. If, among the three EEC institutions, the faculty of bringing such an action were to be reserved solely to the Council and the Commission, the plural contained in the text would be senseless. In that case the text should speak in the singular of 'the other institution', i.e. either the Council or the Commission, since the Court of Justice obviously cannot bring an action against itself. The plural used thus makes it clear that the intention was to include Parliament among the parties having capacity to sue.
19. In the prevailing opinion there should now be no grounds for any further doubts as to the European Parliament's right to bring an action. But this right has not so far been expressly confirmed; such confirmation can be provided by the Court of Justice only when Parliament institutes proceedings for failure to act. Even if

Parliament were not to win its case, this would still achieve, as regards the problem of the admissibility of such an action, a valuable clarification when the Court recognizes Parliament's capacity to institute proceedings for failure to act.

The Council's and the Commission's capacity to be made a defendant

20. The actions concerning the common transport policy should be brought against the Council and the Commission who, by the terms of the first paragraph of Article 175 EEC, have the capacity to be made defendants, so that there is no doubt as to the admissibility of such actions.

The type of measure, failure to adopt which is allegedly against the Council and the Commission

21. The parties having capacity within the meaning of Article 175 EEC may bring an action before the Court of Justice in respect of any measure which the Council or the Commission has failed to adopt, provided that:
- the Council or the Commission have failed to act
  - the Treaty has been infringed.
22. These two conditions are cumulative. Failure to act should at the same time involve infringement of the Treaty.
23. The term 'to act' is nowhere expressly defined in the Treaty. Its meaning can only be inferred from the context. As regards failure to act by the Council, this poses no problem. The Council can be charged with not having acted on various proposals submitted by the Commission, i.e. with failing to adopt regulations, directives, decisions, recommendations or opinions, for it is solely through these acts, listed in Article 189, that the Council can 'act' within the meaning of Articles 175 and 176.
24. It is thus not sufficient for the Council to decide to forward a proposal from the Commission to the Permanent Representatives, and for the latter to place it on the agenda without delay.
25. As regards the Commission, 'to act' means also to frame proposals to be submitted to the Council, given that this represents a substantial part of the Commission's activities and that the Council, for its part, cannot act in the absence of such proposals.
26. For the action to be admissible, the institution complained against should be under an obligation to act. Failure to do so, when such an obligation exists, results in infringement of the Treaty.

27. The Council's and the Commission's legal obligation to act derives from the text of the Treaties and, by the terms of Article 3(e) EEC, the adoption of a common policy in the sphere of transport is part of the activities of the Community. By the terms of Article 74 et seq. EEC, it is in particular the Council's duty to lay down all the appropriate provisions within the framework of the Common Transport Policy.

Specific procedural requirements laid down in the second paragraph of Article 175 EEC

28. By the terms of the second paragraph of Article 175 EEC, action for failure to act shall only be admissible if the institution concerned has first been called upon to act. There is a triple purpose to this prior invitation to act. First of all, it is intended to offer the institution concerned an opportunity to settle the conflict out of court. Secondly, it is meant as a warning that the party with capacity to sue intends to take legal proceedings if the failure to act should prove protracted, i.e. if the institution concerned does not define its position within a specific time-limit. By this means, the party having capacity to sue signifies that the request is a call to action within the meaning of Article 175. Finally, the issuing of a call confers on the potential plaintiff the right to bring an action when the remaining procedural requirements have been satisfied. The Treaty lays down no particular formal requirements as regards the call to action, but the latter must state explicitly that it is being issued pursuant to Article 175.
29. The call to action must, first of all, specify the subject of the possible subsequent suit for failure to act. The purpose of this invitation is to elicit action from the institution to which it is addressed. In order to ensure that the action is not dismissed as inadmissible, its subject must be the same as that of the prior call to action. Obviously, the call to action should be issued by the institution as such. It is the European Parliament as an institution that has capacity to bring the action, the President of the Parliament being only an organ of that Parliament and not the institution itself. In order to be able legitimately to represent Parliament, the President requires a mandate, which can only be conferred by a resolution of Parliament.



30. The issuing of the call to action marks the beginning of the period of two months within which the Council or the Commission is required to define its position. For the purposes of legal certainty, it is necessary that the start of this period should be determined precisely. It can, in fact, only begin at the moment when Parliament's resolution containing an invitation to act reaches the Council or the Commission.
31. The action shall be admissible only if the institution thus called upon has not defined its position within two months from the call to action, or, obviously, if the position it has defined is not regarded as satisfactory.
32. The institution called upon will have defined its position if, within two months, it performs the act from which it had refrained. In that case the legal action becomes purposeless.
33. The institution concerned can also act by stating its intention to perform the act in question at an early date, the period of two months being insufficiently long for the purpose. Parliament could declare itself satisfied with this promise and not proceed with the action.
34. If the institution concerned expressly refuses to enact the measure requested and Parliament finds the justification adduced contrary to the Treaties, or for other reasons is not satisfied with the reply, it can institute proceedings within a period of two months.
35. The institution called upon to act cannot evade this obligation by adopting a provisional measure. Otherwise there would be no point in creating the possibility of bringing proceedings for failure to act. The purpose of Article 175 is to elicit a measure, and the institution concerned cannot elude this by resorting to dilatory conduct. The notion of 'defining its position' must be construed by reference to the purpose of the proceedings for failure to act and must therefore imply the performance of a fully valid act by the institution concerned.
36. The time-limit laid down in the second paragraph of Article 175 must be observed. Failure to do so renders the action inadmissible and entails its dismissal. The period mentioned in the second paragraph of Article 175 begins from the receipt by the Council and the Commission of the letter containing the invitation to act. This does not emerge clearly from the text of this provision, but it is consonant with the general principles governing the receipt of declarations of intent, and also appears in the third paragraph of Article 173 and in Article 81(1) of the Rules of Procedure of the Court of Justice.

The adequacy of the grounds of the action

37. An admissible action is well founded if the institution complained against was under an obligation to adopt the measures in question and failed to do so.
38. As regards the transport sector, Article 74 EEC lays down that a Community transport policy shall be instituted. The article states that the Member States shall pursue the objectives of the Treaty in matters concerning transport within the framework of a common transport policy. The term 'within the framework' must be understood in the sense that all Community activity concerning transport policy should take place within a Community concept of this policy, hence a Community working basis must be developed.
39. This provision of the Treaty has not so far been put into effect. Until now, only individual isolated measures have been adopted which cannot be regarded as a Community transport policy.
40. The Council's obligation to act derives also from Article 75(1)(c), according to which the Council shall lay down any other provisions appropriate for a common transport policy. For a long time now, numerous Commission proposals, all in pursuance of the objective established by Article 74, have lain before the Council. The Council's failure to act consists in having disregarded many of these proposals.
41. The argument according to which the Council should be allowed time to adopt the measures concerned can in no way attenuate the charge of omission, given that the Council has yet to pronounce on some proposals that have been before it for 12 years. The reader should refer to the list appended to this report.
42. The requirement of unanimity for Council decisions gives rise to problems. In practice, decisions on transport policy matters are at present taken in the Council only unanimously.
43. Pursuant to Article 75(1) EEC, the Council, taking into account the distinctive features of transport, should, after the end of the second state act as a rule by a qualified majority. Article 75(3) contains a derogation from this, requiring that provisions concerning the principles of the regulatory system for transport whose application would be liable to have a serious effect on the standard of living and on employment in certain areas, as well as on the operation of transport facilities, shall be laid down by the Council acting unanimously. In so doing, the Council should take account of the need for adaptation to the economic development which will result from establishing the Common Market.

44. While the rule of qualified majority, which tends to promote the integration contemplated in Article 75(1), is already restricted by Article 75(3), the integration was even further delayed by the 1966 'Luxembourg Agreement', in consequence of which the Council no longer acts by qualified majority.
45. Following the Luxembourg Agreement, decisions on proposals from the Commission are always taken unanimously when a partner's vital interests are at stake. There is no generally accepted definition of the notion of a partner's vital interests, nor has there been the slightest attempt to achieve some objective and verifiable delimitation of the concept. The important point is that since 1966 every Member State has been taking decisions on its own account - a fact of vital importance. In the Council of Transport Ministers no majority decisions have been taken since that time.
46. Since unanimity can only be expected to occur in sporadic cases, no progress in integration whatsoever can come in this way. Proceedings for failure to act will also provide an opportunity to the Court of Justice to pronounce on the Council's present voting procedure.
47. Under the Rome Treaties, the requirement of unanimity is reserved solely for decisions of fundamental, political or legal, import. The principle of unanimity is based on the acceptance of sovereignty as the determining factor in the process of the shaping of objectives and the taking of decisions by institutions. The principle of sovereignty as a basis for cooperation and of unanimity as the method of voting cannot promote the integration of Europe, but on the contrary, can only open the way to total inactivity. The rule of qualified majority, on the other hand, is founded in the solidarity of the Member States within the Community which is recognized as the basis of the process of shaping objectives and making decisions by the Community institutions. Under this rule, no Member State alone can obstruct a decision. The balancing of national interests and the weighting of the votes of the States in the interplay of forces involved in the decisional process, mean that the rule of qualified majority, being an expression of solidarity, carries the best prospects for integration. The knowledge that it may be defeated in the voting at any time is a constant incentive to every Member State to be ready to compromise. This voting method, therefore, often acts as a means of pressure that makes compromise possible, while compromise, in turn, renders the actual voting unnecessary.

48. Recourse to the process of law, i.e. bringing proceedings against the Council and the Commission for failure to act in the matter of a Community transport policy, will give the Court of Justice the opportunity to ascertain the compatibility with the Treaty of the voting procedure applied under the Luxembourg Agreement and, possibly, to define, at least, the concept of a partner's vital interest embodied in that Agreement.

49. Should the Court conclude that the 1966 Luxembourg Agreement is contrary to the Treaty, this would have an importance going far beyond transport policy.

50. If, in defence of its failure to act, the Council should plead the requirement of unanimity pursuant to Article 75(3) EEC, the Court of Justice would still be able to rule, specifically for the transport sector, on the interpretation to be placed on that provision, as to:

- what constitutes provisions concerning the principles of the regulatory system for transport,
- how it can be determined whether a serious effect on the standard of living and on employment is likely to occur,
- in what circumstances is the operation of transport facilities prejudiced,
- when is the effect 'serious',
- on whom lies the onus of proving all the above,
- to what extent does the requirement to take into account 'the need for adaptation to the economic development which will result from establishing a common market', restrict the validity of the plea of possible 'serious effect'.

It may emerge that unanimity may be required only in very special cases.

51. The Commission's duty to act is clear from the following consideration:

The Council can act in respect of establishing a common transport policy only on a proposal from the Commission. That alone lays an indirect duty on the Commission. But the Commission's duty to submit proposals to the Council also derives from its position as guardian of the Treaties. In particular, it is the Commission's task to ensure that the aims and provisions of the Community Treaties are fulfilled and respected.

52. One of these provisions is that a common transport policy shall be established. The Commission must, therefore, ensure that this comes about, and must submit to the Council the appropriate proposals. The Council's deplorable shortcomings in decision-making do not absolve the Commission from this duty.
53. Article 155 EEC lays upon the Commission the duty to submit proposals insofar as the Treaty expressly provides. This is the Commission's task in ensuring the proper functioning and development of the Common Market. As already mentioned, pursuant to Article 75(1) EEC, the Council acts on a proposal from the Commission. To ensure the development of the Common Market in the transport sector, the Commission must submit proposals to the Council, so that the latter can act. It is the Commission's duty to do so even when there is no likelihood of the Council's acting, given that the Commission's task is, not to take upon itself the Council's responsibilities, but to create all those conditions that ensure the development of the Common Market. If the Commission fails to submit proposals which it considers necessary, because it feels that the Council will not adopt them, the Commission deprives Parliament, and incidentally deprives itself, of the possibility of proceeding against the Council for failure to act.

(c) Conclusions

54. There can be no doubt whatsoever as to the admissibility of a suit for failure to act either against the Council or the Commission. As to the procedure to be adopted, the call to act could be issued simultaneously to the Council and the Commission. The Council should be invited to act on the proposals from the Commission which have been before it for many years; the Commission should be invited specifically to submit the remaining proposals required to the Council.
55. If, as can be expected, neither party defines its position in a satisfactory manner, action should be brought before the Court of Justice, within the time-limits prescribed, simultaneously against both institutions.

MOTION FOR A RESOLUTION (Doc. 1-462/79)  
tabled by Mr BAUDIS  
on behalf of the Liberal and Democratic Group  
pursuant to Rule 25 of the Rules of Procedure  
  
on transport policy



